

INDEX TO APPENDIX.

Page

THE RODRIGUE RECORD

1. Complaint entitled "Paulette Boudreaux Rodrigue, et al. vs. The Aetna Casualty and Surety Company and Humble Oil and Refining Company," Civil Action No. 3109 of the United States District Court for the Eastern District of Louisiana	1
2. Complaint entitled "Paulette Boudreaux Rodrigue, et al. vs. Rubin W. Mayronne, Jr., d/b/a Mayronne Drilling Company," Civil Action No. 3298 of the United States District Court for the Eastern District of Louisiana	7
3. Motion to Dismiss Civil Action Nos. 3109 and 3298	13
4. Order Consolidating Civil Action Nos. 3109 and 3298	15
5. Minute Entry Dismissing Aetna Casualty and Surety Company from Civil Action No. 3109	16
6. Motion to Dismiss Civil Action No. 3298	18
7. Judgment of Dismissal in Civil Action No. 3109	19
8. Judgment of Dismissal in Civil Action No. 3298	20
9. Oral Reasons for Judgment in Dismissing Civil Action Nos. 3109 and 3298	21
10. Judgment by the United States Court of Appeals for the Fifth Circuit	27
11. Reasons for Judgment of the United States Court of Appeals for the Fifth Circuit	29

INDEX—(Continued):

Page

THE DORE RECORD

1. Complaint entitled "Ella Mae DuBois Dore, Individually and as Administratrix of the Estate of Joseph Doré, and as Natural Tutrix of and for and on behalf of the minors, Rodney James Dore, Vickie Ann Dore and Jo Ella Dore vs. The Link Belt Company and Link Belt Speeder Corporation," Civil Action No. 11662 of the United States District Court for the Western District of Louisiana	31
2. Supplemental and Amended Complaint	35
3. Motion Objecting to the Venue or Jurisdiction of Court	38
4. Motion to Dismiss on Behalf of The Link Belt Company	40
5. Judgment of the Court	43
6. Order Certifying the Question	46
7. Judgment of the United States Court of Appeals for the Fifth Circuit	49
8. Reasons for Judgment of the United States Court of Appeals for the Fifth Circuit	51
9. Denial of Rehearing	64

Filed December 9, 1964.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION**

CIVIL ACTION No. 3100, DIVISION.

PAULETTE BOUDREAUX RODRIGUE, ET AL.,

versus

**THE AETNA CASUALTY AND SURETY COMPANY
AND HUMBLE OIL AND REFINING COMPANY.**

COMPLAINT.

The complaint of Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue, individually and as administratrix of the estate of Butley J. Rodrigue, and as tutrix of and administratrix of the estate of her two minor children Angela Rae Rodrigue and Butley J. Rodrigue, Jr., with respect states that:

1.

The complainants are citizens of the State of Louisiana and duly qualified to act in these proceedings; the defendant The Aetna Casualty and Surety Company is domiciled in the State of Connecticut but has its registered agent for service of process for the state of Louisiana in the Parish of East Baton Rouge, Louisiana; defendant Humble Oil and Refining Company is domiciled in the State of Delaware; the mat-

ter in controversy exceeds \$10,000.00 exclusive of interest and costs.

2.

The defendant Aetna Casualty and Surety Company is the liability insurer carrying a general and comprehensive policy of liability insurance covering Mayronne Drilling Company and particularly Mayronne Drilling Company's operation which are referred to in this complaint.

3.

Complainant, Paulette Boudreaux Rodrigue, was, until the death of Butley J. Rodrigue, married to Butley J. Rodrigue, and of that marriage were born two children, Angela Rae Rodrigue, age one year, and Butley J. Rodrigue, Jr., age three weeks.

4.

Butley J. Rodrigue greatly loved and supported his said family and was in turn greatly loved by them.

5.

The two said children of complainant and Butley J. Rodrigue would have received guidance, counseling, love, affection and support from their father but for his below described untimely death.

3

6.

Complainant, Paulette Boudreaux Rodrigue, would have received the love, affection, support, counseling and guidance of her husband had it not been for his below described untimely death.

7.

Butley J. Rodrigue, at the moment before his death, had been a robust healthy man of the age of twenty-one years and was and had been gainfully employed by Loomis Hydraulic Testing Company, Inc. and looked forward to a long and beneficial period of employment with that company and would have received promotions and increases in his income from that company had it not been for his untimely death.

8.

At the time up until his death, Butley J. Rodrigue was supporting his said family and was at the time of his death, earning with his said employer a steady and good income.

9.

On March 7, 1964, Butley J. Rodrigue, as a part of his duties with his said employer, went aboard that certain drilling rig which rests in navigable waters within the State of Louisiana, at a point north by northwest of Burrwood, Louisiana; the said rig is further described as State Lease 803.

10.

The said drilling rig was owned and operated and maintained by Humble Oil and Refining Company and was also owned, operated and maintained by Mayronne Drilling Company, the insured in the above referred to policy of insurance issued by Aetna Casualty and Surety Company.

11:

On the said date and on the said rig, Butley J. Rodrigue was killed because of the negligence of Humble Oil and Refining Company and Mayronne Drilling Company through their agents and employees.

12.

The above referred to negligence includes the failure to properly maintain and equip the said rig and keep it free of obstacles.

13.

The doctrine of *Res Ipsa Loquitur* is hereby specially pledged.

14.

Butley J. Rodrigue, at the time of his death, was on the said rig as a business visitor and was owed a high degree of care by the said Humble Oil and Refining Company and Mayronne Drilling Company.

15.

Because the said injury occurred on navigable waters, the application of the general maritime rules of

law with respect to maritime wrongs is hereby specially pledged.

16

Because of the premises, complainant, Paulette Boudreaux Rodrigue, has been damaged by the loss of love, affection, counsel and guidance and assistance in the up-bringing of their said children in the full and true sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars, and for the loss of support in the full and true sum of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars.

17.

Angela Rae Rodrigue has been damaged by the loss of love, affection, counselling and guidance because of the premises and this loss is valued at Sixty Thousand and No/100 (\$60,000.00) Dollars; the loss of support which Angela Rae Rodrigue has sustained because of the premises is valued at Thirty-five Thousand and No/100 (\$35,000.00) Dollars.

18.

Butley J. Rodrigue, Jr. has been damaged by the loss of love, affection, counselling and guidance because of the premises and this loss is valued at Sixty-two Thousand and No/100 (\$62,000.00) Dollars; the loss of support which Butley J. Rodrigue, Jr. has sustained because of the premises is valued at Thirty-six Thousand No/100 (\$36,000.00) Dollars.

WHEREFORE, complainants pray that defendants be served with a copy of this complaint and cited to answer same, and after due delays and proceedings had there be judgment herein in favor of complainant, Paulette Boudreaux Rodrigue, in the full and true sum of Four Hundred Thousand and No/100 (\$400,000.00) Dollars, and in favor of Paulette Boudreaux Rodrigue as tutrix of Angela Rae Rodrigue in the full and true sum of Ninety-five Thousand and No/100 (\$95,000.00) Dollars, and in favor of Paulette Boudreaux Rodrigue as tutrix of Butley J. Rodrigue, Jr. in the full and true sum of Ninety-eight Thousand and No/100 (\$98,000.00) Dollars, all said judgments being rendered against the defendants, Aetna Casualty and Surety Company and Humble Oil and Refining Company, in solido, with interest as the law provides.

Complainants further pray that this case be tried by jury; and

For all costs in these proceedings; and

For all general and equitable relief.

O'NEAL & WAITZ,
By: PHILIP E. HENDERSON,
(Philip E. Henderson),
Houma, Louisiana,
Attorney for Complainants.

Filed October 15, 1965.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION**

CIVIL ACTION No. 3298, DIVISION.

PAULETTE BOUDREAUX RODRIGUE, ET AL.,

versus

**RUBIN W. MAYRONNE, JR., d/b/a MAYRONNE
DRILLING COMPANY.**

COMPLAINT.

The complaint of Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue, individually and as administratrix of the estate of Butley J. Rodrigue, and as tutrix of and administratrix of the estate of her two minor children, Angela Rae Rodrigue and Butley J. Rodrigue Jr., with respect states that:

1.

Jurisdiction in this case is vested in this Court by virtue of 43 USCA Section 1333, which provides for original federal jurisdiction in controversies arising out of and in connection with operations on the artificial islands on the outer Continental Shelf; this suit is a controversy arising out of and in connection with Mayronne Drilling Company's operations on that cer-

tain fixed platform in the outer Continental Shelf which is located in Block 22 of Grand Isle area and designated as Federal Lease No. 031, which operations were conducted for the purposes of exploring for and developing and removing the natural resources of the subsoil and seabed of the outer Continental Shelf.

2.

The defendant, Rubin W. Mayronne, Jr. was at all times pertinent to this complaint doing business as the Mayronne Drilling Company (hereinafter Rubin W. Mayronne, Jr., d/b/a Mayronne Drilling Company will be referred to simply as Mayronne).

3.

Complainant, Paulette Boudreaux Rodrigue, was, until the death of Butley J. Rodrigue, married to Butley J. Rodrigue, and of that marriage were born two children, Angela Rae Rodrigue, born July 26, 1963, and Butley J. Rodrigue, Jr., born July 6, 1964.

4.

Butley J. Rodrigue greatly loved and supported his said family and was in turn greatly loved by them.

5.

The two said children of complainant and Butley J. Rodrigue would have received guidance, counsel-

9

ling, love, affection and support from their father but for his below described untimely death.

6.

Complainant, Paulette Boudreaux Rodrigue, would have received the love, affection, support, counseling and guidance of her husband had it not been for his below described untimely death.

7.

Butley J. Rodrigue, at the moment before his death, had been a robust healthy man of the age of twenty-one years and was and had been gainfully employed by Loomis Hydraulic Testing Company, Inc. and looked forward to a long and beneficial period of employment with that company and would have received promotions and increases in his income from that company had it not been for his untimely death.

8.

At the time up until his death, Butley J. Rodrigue was supporting his said family and was at the time of his death, earning with the said employer a steady and good income.

9.

On March 7, 1964, Butley J. Rodrigue, as a part of his duties with his said employer, went aboard

10

that certain drilling rig which rests in navigable waters within the State of Louisiana, at a point north by northwest of Burrwood, Louisiana; the said rig is further described as Federal Lease No. 031.

10.

The said drilling rig was owned and operated and maintained by Humble Oil and Refining Company and was also owned, operated and maintained by Mayronne Drilling Company.

11.

On the said date and on the said rig, Butley J. Rodrigue was killed because of the negligence of Humble Oil and Refining Company and Mayronne Drilling Company through their agents and employees.

12.

The above referred to negligence includes the failure to properly maintain and equip the said rig and keep it free of obstacles:

13.

The doctrine of Res Ipsa Loquitur is hereby specially pleaded.

14.

Butley J. Rodrigue, at the time of his death, was on the said rig as a business visitor and was owed

a high degree of care by the said Humble Oil and Refining Company and Mayronne Drilling Company.

15.

Because the said injury occurred on navigable waters, the application of the general maritime rules of law with respect to maritime wrongs is hereby specially pleaded.

16.

Because of the premises, complainant, Paulette Boudreaux Rodrigue, has been damaged by the loss of love, affection, counsel and guidance and assistance in the up-bringing of their children in the full and true sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars, and for the loss of support in the full and true sum of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars.

17.

Angela Rae Rodrigue has been damaged by the loss of love, affection, counselling and guidance because of the premises and this loss is valued at Sixty Thousand and No/100 (\$60,000.00) Dollars; the loss of support which Angela Rae Rodrigue has sustained because of the premises is valued at Thirty-five Thousand and No/100 (\$35,000.00) Dollars.

Butley J. Rodrigue, Jr. has been damaged by the loss of love, affection, counselling and guidance because of the premises and this loss is valued at Sixty-Two Thousand and No/100 (\$62,000.00) Dollars; the loss of support which Butley J. Rodrigue, Jr. has sustained because of the premises is valued at Thirty-six Thousand No/100 (\$36,000.00) Dollars.

WHEREFORE, complainants pray that defendant be served with a copy of this complaint and cited to answer same, and after due delays and proceedings had there be judgment herein in favor of complainant, Paulette Boudreaux Rodrigue, in the full and true sum of Four Hundred Thousand and No/100 (\$400,000.00) Dollars, and in favor of Paulette Boudreaux Rodrigue as tutrix of Angela Rae Rodrigue in the full and true sum of Ninety-five Thousand and No/100 (\$95,000.00) Dollars, and in favor of Paulette Boudreaux Rodrigue as tutrix of Butley J. Rodrigue, Jr. in the full and true sum of Ninety-eight Thousand and No/100 (\$98,000.00) Dollars, all said judgments being rendered against the defendants, with interest as the law provides.

Complainants further pray that this case be tried by jury; and

For all costs in these proceedings; and

For all general and equitable relief.

O'NEAL & WAITZ,

By: PHILIP E. HENDERSON,

(Philip E. Henderson),

Houma, Louisiana,

Attorneys for Complain-
ants.

FILED: November 30, 1965.

(Title Omitted.)

Numbers 3109 and 3298.

MOTION TO DISMISS.

TO THE HONORABLE, THE UNITED STATES DIS-
TRICT COURT FOR THE EASTERN DISTRICT OF
LOUISIANA, BATON ROUGE DIVISION:

NOW INTO COURT, comes Aetna Casualty and
Surety Company, Rubin W. Mayronne, Jr. d/b/a
Mayronne Drilling Company, and Humble Oil and
Refining Company, and moves the Court in each of
the above numbered and entitled civil actions as fol-
lows:

1.

To dismiss Aetna Casualty and Surety Company
as a party defendant under the authority of *Guess*
v. Read, 290 F. 2d 622 on the ground that the acci-

dent complained of herein is stipulated to have occurred more than one marine league from the nearest point of land.

2.

To dismiss Rubin W. Mayronne, Jr. d/b/a Mayronne Drilling Company on the ground that both petitioner and Rubin W. Mayronne, Jr. d/b/a Mayronne Drilling Company are citizens and residents of the State of Louisiana and that therefore no diversity of citizenship exists as required in civil actions in the Federal Courts of the United States.

3.

To dismiss the action as against Aetna Casualty and Surety Company, Rubin W. Mayronne, Jr. d/b/a Mayronne Drilling Company and Humble Oil and Refining Company because the cause of action for death under the Louisiana Law is not applicable more than one marine league from shore, and it is stipulated that the cause of action in the instant suits arose more than one marine league from shore.

4.

In the alternative, to dismiss Humble Oil and Refining Company, Rubin W. Mayronne, Jr. d/b/a Mayronne Drilling Company, and Aetna Casualty and Surety Company because even if the Court

should hold that the cause of action for death under the Louisiana Law extends beyond one marine league from shore, complainant is estopped from urging this cause of action under the authority of *Kent v. Shell Oil Company*, 286 F. 2d 746.

WHEREFORE movers pray that they be dismissed from each of the above numbered and entitled civil actions.

Respectfully submitted:

ADAMS AND REESE,

By (S.) RICHARD C. BALDWIN,

(Richard C. Baldwin),

Attorney for Humble Oil &
Refining Co., Aetna Cas-
ualty & Surety Co., Rubin
W. Mayronne, Jr., d/b/a
Mayronne Drilling Com-
pany.

Filed: December 6, 1965.

(Title Omitted.)

Numbers 3109 and 3298.

ORDER.

Considering the motion for consolidation of the captioned matters;

IT IS ORDERED that the captioned cases be, and the same are hereby consolidated.

Baton Rouge, Louisiana, December 6, 1965.

(S.) E. GORDON WEST,

Judge.

(Title Omitted.)

Numbers 3109 and 3298.

MINUTE ENTRY:

December 17, 1965.

WEST, J.

These causes came on for hearing this day on motions by defendants, Aetna Casualty & Surety Co., Humble Oil & Refining Co., and Rubin W. Mayronne, d/b/a Mayronne Drilling Co., (1) to dismiss and (2) for leave to file impleading petition.

No counsel are present.

The Court having previously been informed by counsel that these motions would be submitted without oral argument,

IT IS ORDERED that defendants' motion to dismiss be, and it is hereby, GRANTED as to Aetna Casualty & Surety Co., but DENIED as to Humble Oil & Refining Co. and Rubin W. Mayronne, d/b/a Mayronne Drilling Co.

IT IS FURTHER ORDERED that defendants' motion for leave to file impleading petition be, and it is hereby, DENIED.

(S.) E. G. W.

Philip E. Henderson, Esq.
Thomas W. Thorne, Jr., Esq.
Bernard J. Caillouet, Esq.
Richard C. Baldwin, Esq.

Filed: September 21, 1966.

(Title Omitted.)

Number 3298.

**MOTION TO DISMISS ON GROUNDS OF
PRESCRIPTION.**

NOW INTO COURT, through undersigned counsel, come the defendants herein, and moves the Court to dismiss this suit on the grounds that said suit was filed more than one year after the date the cause of action arose and that therefore same is prescribed under the provisions of Article 2315 of the Louisiana Civil Code.

Respectfully submitted,
ALEXANDER COCKE AND
ADAMS AND REESE,
By (S.) RICHARD C. BALDWIN,
(Richard C. Baldwin),
Attorney for defendants,
. 847 National Bank of
Commerce Bldg.,
New Orleans, Louisi-
ana,
529-4655.

(Memorandum in support of foregoing motion not
copied herein; included in original record No. 3298.)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA.**

No. 3109 Civil Action.

PAULETTE BOUDREAUX RODRIGUE,
Plaintiff,

versus

**THE AETNA CASUALTY AND SURETY COMPANY and
HUMBLE OIL AND REFINING COMPANY,**
Defendants.

JUDGMENT.

This cause came on for trial before the Court and a jury, Honorable E. Gordon West, District Judge, presiding, and the Court dismissed the action before trial assigning oral reasons therefor. Now,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of the remaining defendant, Humble Oil and Refining Company, and against plaintiff, Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue and administratrix of the estate of her two minor children, Angela Rae Rodrigue, and Butley J. Rodrigue, Jr., dismissing plaintiff's suit at her cost.

Baton Rouge, Louisiana, October 21, 1966.

A. DALLAM O'BRIEN, JR.,
Clerk,

By (S.) C. H. BANTA,
Deputy Clerk,

(S.) E. G. W.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA.**

No. 3298 Civil Action.

PAULETTE BOUDREAUX RODRIGUE,
Plaintiff,

versus

**RUBIN W. MAYRONNE, JR., d/b/a MAYRONNE
DRILLING COMPANY,**
Defendant.

JUDGMENT.

This cause came on for trial before the Court and a jury, Honorable E. Gordon West, District Judge, presiding, and the Court dismissed the action before trial assigning oral reasons therefor. Now,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the remaining defendants, Rubin W. Mayronne, Jr., d/b/a Mayronne Drilling Company, and Humble Oil and Refining Company, and against plaintiff, Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue and tutrix of and administratrix of the estate of her minor children, Angela Rae Rodrigue and Butley J. Rodrigue, Jr., dismissing plaintiff's suit at her cost.

Baton Rouge, Louisiana, October 21, 1966.

A. DALLAM O'BRIEN, JR.,
Clerk,

By (S.) C. H. BANTA,
Deputy Clerk,
(S.) E. G. W.

Transcript of Ruling of the Court, dismissing Civil Actions 3109 and 3298, made in Open Court on September 21, 1966, at the United States Courthouse, Baton Rouge, Louisiana; the Honorable E. Gordon West, United States District Judge, presiding.

Appearances:

Messrs. O'Neal & Waitz, By: A. Deutsch O'Neil, Sr., Esq., and Philip E. Henderson, Esq., Houma, Louisiana, Attorneys for Plaintiffs.

Messrs. Lemle & Kelleher, By: Thomas W. Thorne, Jr., Esq., National Bank of Commerce Building, New Orleans, Louisiana, Attorneys for Employers National Insurance Company.

Alexander C. Cocke, Esq., P. O. Box 60626, New Orleans, Louisiana, Attorney for Humble Oil & Refining Company, Defendant.

ORAL REASONS FOR JUDGMENT.

The Court:

During the recess, the Court took under advisement for reconsideration the motions which had pre-

viously been filed by the defendants in the civil suits and the respondents in the admiralty action to dismiss each of the three actions, the diversity action number 3109, the outer continental shelf action, number 3298, and the admiralty action, number 810.

Let the record further show that after hearing argument of counsel during the noon recess and after reconsidering all of the briefs that have previously been filed in this matter, together with a reconsideration of the law that I believe to be applicable to these motions, I will make the following rulings with the understanding that these rulings supersede and take the place of any contrary rulings that I might have previously made with regard to these or similar motions in these three cases.

First, with regard to Civil Action 3109, which is a case based not on the allegation of the applicability of the outer continental shelf act, but simply on diversity of citizenship with more than ten thousand dollars involved, the Court is of the opinion that that suit should be dismissed on the ground that this accident, by agreement of counsel, as contained in the pre-trial order, occurred more than a marine league off the coast of Louisiana in the area known as the outer continental shelf. Thus, there is no jurisdiction in this Court over an action being as I say an action brought on a suit occurring outside of the State of Louisiana.

Insofar as Civil Action 3298 is concerned, this is an action brought specifically under the provisions of the outer continental shelf act. It is the defendant's contention in this suit that this matter is barred by prescription because of the fact that suit was filed more than one year, but less than two years, following the accident, and the defendant contends that if as declared in the outer continental shelf act the Law of Louisiana is extended to cover this situation, not only must the provisions of Article 2315 of the Civil Code providing for an action for wrongful death be extended, but also the one year prescriptive period must be extended and thus the case will be prescribed by one year. It is the defendant's further contention in support of the motion that the outer continental shelf act would only make state law applicable to this area to fill a void not provided for in federal law, and that if in fact federal law did grant to the plaintiffs a right of action for wrongful death, then they could not also have the advantage of the extension of state law under the outer continental shelf act. The defendant further claims that if Article 2315 is extended under the provisions of the outer continental shelf act, that then of necessity, the Louisiana Workmen's Compensation law would be extended, thus limiting the right of plaintiff to sue in workmen's compensation because of the fact that he was performing part of the trade, business or occupation of the prime contractor.

The defendant further claims in connection with this suit that under the holding of *Pure Oil Company versus Snipes*, 293 Fed. (2) at page 60, that Article 2315 of the Louisiana Civil Code does not, in fact, cover this case, but that instead the Federal law must cover. Of course, needless to say, counsel for plaintiff disagrees with all of these contentions and argues, and cited his authorities therefor. It is the opinion of this Court that suit 3298 must also be dismissed and that this suit must proceed as a suit in admiralty under the "Death on the High Seas" statute.

In *Pure Oil versus Snipes*, in a very detailed opinion by Judge Brown of the Fifth Circuit Court of Appeals, it was specifically and categorically held that the one year prescriptive period of Article 2315 did not apply to an accident occurring on a fixed platform outside of the Continental Limits of the State of Louisiana, and that in fact Louisiana law did not apply, but that Federal Maritime law would apply. Rightly or wrongly, this is the specific holding in *Pure Oil versus Snipes*. It is the reasoning of the Court in *Pure Oil versus Snipes*, referring particularly to the question of the applicability of the Workmen's Compensation Statute, that Congress did not intend to apply such laws to an accident happening on a fixed platform, and they referred specifically to the limitations placed upon an employee to sue his employer, and Judge Brown says, that in the opinion of that Court, Congress did not intend to place such varied restrictions on employees working in the

outer continental shelf area as would be applied if the laws of all of the various states bordering on navigable waters were applied rather than the laws of Federal Maritime—provisions of Federal Maritime law.

You will recall that in that case, Judge Brown further pointed to the fact that the outer continental shelf act contemplated the Longshoremen and Harborworkers Act as the remedy for a person injured on a fixed platform located outside of the limits of the state, and he pointed to that along with other provisions of the act that indicated clearly the intent of Congress to apply not state law but Federal law and then more specifically the Federal Maritime law to accidents happening in this area.

So we come now to the question of Federal Maritime law. If we are to say as the Snipes case did say, that Louisiana law does not apply, then we must conclude that Article 2315 of the Louisiana Civil Code does not apply but that Federal Maritime law which does give a right of action for wrongful death must apply. In other words, the void is not there by saying that 2315 does not apply. It does not create a void in which the plaintiff would find herself without a cause of action; on the contrary, to hold as I am holding would carry out specifically the mandate of the Snipes case and at the same time would not deprive the plaintiff of a right of action for wrongful death, because if we apply Maritime law as Judge Brown said in the Snipes case must be applied, then Death

on the High Seas is the maritime law and the Death on the High Seas statute does provide for wrongful death and, consequently, both the intent of Congress and the interpretation at least in the Snipes case and the rights of the plaintiff are preserved and protected.

So I will dismiss, and grant the motion to dismiss 3298, which is the action based upon the outer continental shelf act against Rubin W. Mayronne, Jr., doing business as Mayronne Drilling Company, as the only defendant.

This will leave the suit as one in admiralty to be tried without a jury to the Court alone with the defendants being Rubin W. Mayronne, Jr., doing business as Mayronne Drilling Company, and Humble Oil and Refining Company. I believe that is correct, is it not?

Mr. Baldwin:

Yes, sir.

The Court:

With that explanation, gentlemen, and after much much thought and all the study that I know how to give to this very disturbing, and I might say mixed-up problem, that is the conclusion that I find that I must inevitably come to.

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

October Term, 1967.

No. 24504.

D. C. Docket Nos. CA 3109 & CA 3298.

PAULETTE BOUDREAUX RODRIGUE, ETC.,
Appellant,

versus

AETNA CASUALTY AND SURETY COMPANY, ET AL.,
Appellees.

**Appeal from the United States District Court for the
Eastern District of Louisiana.**

**Before BELL, AINSWORTH and GODBOLD, Circuit
Judges.**

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Paulette Boudreaux Rodrigue, Etc., be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

May 16, 1968

Issued as Mandate: JUN 7 1968

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 24504

**PAULETTE BOUDREAUX RODRIGUE, ETC.,
Appellant,
versus**

**AETNA CASUALTY AND SURETY COMPANY, ET AL.,
Appellees.**

**Appeal from the United States District Court for the
Eastern District of Louisiana.**

(May 16, 1968.)

**Before BELL, AINSWORTH and GODBOLD, Circuit
Judges.**

PER CURIAM: Appellant's husband was killed in an accident on the derrick of a drilling rig on a fixed-structure located on the Outer Continental Shelf approximately 28 miles south of Grand Isle, Louisiana. The District Judge dismissed appellant's civil suits based upon Louisiana's Death Statute (La. R.C.C. Art. 2315) but retained jurisdiction over her suit in Admiralty under the Death on the High Seas Act (46 U.S.C. § 671, et seq.) and awarded a substantial judgment under that Act.

The contention that under Section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. § 1331), appellant may bring an action for damages under the Louisiana Death Statute (La. R.C.C. Art. 2315) has recently been decided by us adversely to the contentions of appellant. In *Dore, et al. v. Link Belt Co., et al.*, 5 Cir., 1968, F.2d [No. 24370 decided March 25, 1968], we held that the exclusive remedy under these circumstances is the Death on the High Seas Act. We are not persuaded that we should change our holding in *Dore*, which is supported by three recent decisions of this Court in *Loffland Brothers Company v. Roberts*, 5 Cir., 1967, 386 F. 2d 540, cert. denied, U. S., S. Ct. (1968); *Ocean Drilling & Exp. Co. v. Berry Bros. Oilfield Service*, 5 Cir., 1967, 377 F. 2d 511; and *Pure Oil Co. v. Snipes*, 5 Cir., 1961, 293 F. 2d 60.

AFFIRMED.

Filed:

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

Civil Action No. 11662.

**ELLA MAE DUBOIS DORE, Individually and as Ad-
ministratrix of the Estate of Joseph Dore, and as
Natural Tutrix of and for and on behalf of the minors,
Rodney James Dore, Vickie Ann Dore and Jo Ella
Dore,**

Plaintiffs,

versus

**THE LINK BELT COMPANY AND LINK BELT
SPEEDER CORPORATION,**

Defendants.

COMPLAINT.

Plaintiffs, for their complaint, allege as follows:

First.

Plaintiffs are residents of the Parish of Iberia, State of Louisiana, and at the time of his death Joseph Dore was a resident of the Parish of Iberia, State of Louisiana.

Second.

Defendants are nonresident corporation doing business in the State of Louisiana and within the jurisdiction of this Court.

Third.

The damages sued for hereunder are in excess of \$10,000.00, exclusive of interest and costs.

Fourth.

Joseph Dore was the husband of Ella Mae Dubois Dore and the father of Rodney James Dore, Vickie Ann Dore and Jo Ella Dore, all minors, and Joseph Dore and Ella Mae Dore were living together as man and wife at the time of his death and prior thereto and the three children of Joseph Dore herein named were living with Joseph Dore, were dependent upon him and were being cared for and supported by him at the time of his death.

Fifth.

Joseph Dore was married only once and then to Ella Mae Dubois Dore and the three children hereinabove named are the only children who survived Joseph Dore.

Sixth.

On or about March 14, 1965, Joseph Dore was killed while working on an offshore drilling rig at South

Marsh Island Block 51 in the Gulf of Mexico, about fifty miles south of Marsh Island, Iberia Parish, Louisiana; when a crane which was sold, manufactured, supplied and installed by the Link Belt Company and Link Belt Speeder Corporation collapsed and fell a distance of more than sixty feet.

Seventh.

The accident and death of Joseph Dore were caused through the negligent acts and omissions of the Link Belt Company and Link Belt Speeder Corporation, and other persons and corporations whose identities are presently unknown to complainants and which are presently designated as A B & C companies, and John Doe, in negligently designing, manufacturing, assembling, selling, installing and servicing a crane known and designated as Link Belt Speeder TC-78A Commercial Standard 90-58, on a rig at South Marsh Island Block 51, on which Joseph Dore was killed.

Eighth.

Joseph Dore was operating the crane at the time of the accident and his death and defendants were also negligent in failing to warn him of the hazards and dangers involved.

Ninth.

The Link Belt crane which collapsed and caused the death of Joseph Dore was an extremely and

inherently dangerous instrumentality, sold by the Link Belt Company to Shell Oil Company, it was a new crane and it was sold to Shell Oil Company with the knowledge that it would be used by Joseph Dore and other employees of Shell Oil Company on an oil well drilling rig, in offshore operations situated high above the rig and water on a pedestal; and that it would be used and operated by Joseph Dore and other employees of Shell Oil Company in work of the nature and type which it was being used for at the time of the death of Joseph Dore.

Tenth.

Defendants are liable to plaintiffs under express and implied warranties as manufacturers, assemblers, sellers and installers of the crane.

Eleventh.

Plaintiffs bring this action under the General Maritime Laws, the Death of the High Seas Act, 46 USCA 761, et seq., Article 2315 of the Revised Civil Code of the State of Louisiana and under the other laws of the United States and the State of Louisiana.

Twelfth.

Plaintiffs have suffered pecuniary losses, expenses and damages by reason of the death of Joseph Dore, including loss of love and affection, loss of support and inheritance, loss of material aid and services, loss of parental guidance, loss of society and com-

panionship, pain and suffering, anguish and shock totalling \$670,000.00.

Thirteenth.

Amicable demand has been made upon defendants but without avail.

WHEREFORE, complainants pray for judgment as their interest may appear, jointly, severally and in solido, in the sum of \$670,000.00 together with legal interest from date of judicial demand until paid, all costs and expenses of this proceeding; and complainants further pray for a trial by jury.

LANDRY, WATKINS, COUSIN
& BONIN,

By (S.) ALFRED S. LANDRY,
Attorneys for Plaintiffs,
211 East Main Street,
New Iberia, Louisiana.

Filed: January 10, 1966.

(Title Omitted.)

No. 11,662.

SUPPLEMENTAL AND AMENDED COMPLAINT.

Plaintiffs amend the complaint originally filed by them in this proceeding by reiterating the allega-

tions of the first, third, fourth, fifth, eighth, tenth, eleventh, twelfth and thirteenth articles or paragraphs of the complaint, by amending the second, sixth, seventh, and ninth articles of the complaint as well as the prayer of the complaint and by adding the fourteenth article, the amended and added portion reading as follows:

"Second.

Defendants, The Link Belt Company and Link Belt Speeder Corporation are nonresident corporations doing business in the State of Louisiana and within the jurisdiction of this court, and defendant, Road Equipment Company, Inc. is a Louisiana corporation and within the jurisdiction of this court."

"Sixth.

On or about March 14, 1965, Joseph Dore was killed while working an offshore drilling rig at South Marsh Island Block 51 in the Gulf of Mexico, about fifty miles south of Marsh Island, Iberia Parish, Louisiana, when a crane which was sold, manufactured, supplied and installed by The Link Belt Company, Link Belt Speeder Corporation and Road Equipment Company, Inc., collapsed and fell a distance of more than 60 feet."

"Seventh.

The accident and death of Joseph Dore were caused through the negligent acts and omissions of

The Link Belt Company, Link Belt Speeder Corporation and Road Equipment Company, Inc., and other persons and corporations whose identities are presently unknown to complainants and which are presently designated as A B & C companies and John Doe, in negligently designing, manufacturing, assembling, selling, installing and servicing a crane known and designated as Link Belt Speeder TC-78A Commercial Standard 90-58, on a rig at South Marsh Island Block 51, on which Joseph Dore was killed."

"Ninth.

The Link Belt crane which collapsed and caused the death of Joseph Dore was an extremely and inherently dangerous instrumentality, sold by The Link Belt Company, Link Belt Speeder Corporation and Road Equipment Company, Inc. to Shell Oil Company, it was a new crane and it was sold to Shell Oil Company with the knowledge that it would be used by Joseph Dore and other employees of Shell Oil Company on an oil well drilling rig, in offshore operations situated high above the rig and water on a pedestal; and that it would be used and operated by Joseph Dore and other employees of Shell Oil Company in work of the nature and type which it was being used for at the time of the death of Joseph Dore."

"Fourteenth.

Complainants attach hereto and make part hereof a copy of the complaint and interrogatories originally filed in this proceeding."

WHEREFORE, complainants reiterate the allegations of the original petition, as embodied herein, and pray for judgment as their interest may appear, jointly, severally and in solido, in the sum of Six Hundred Seventy Thousand and No/100 (\$670,000.00) Dollars, together with legal interest from date of judicial demand until paid, all costs and expenses of this proceeding; and complainants further pray for a trial by jury.

LANDRY, WATKINS, COUSIN
& BONIN,

Attorneys for Plaintiffs.

By (S.) ALFRED S. LANDRY,
(Alfred S. Landry),
211 East Main Street,
New Iberia, Louisiana.

Filed: March 10, 1966.

(Title Omitted.)

No. 11,662.

**MOTION OBJECTING TO THE VENUE OR
JURISDICTION OF COURT.**

NOW INTO COURT, through undersigned counsel, comes ROAD EQUIPMENT COMPANY, INC., which moves for judgment dismissing the above numbered and entitled cause insofar as it is against ROAD EQUIPMENT COMPANY, INC.

1.

It is specifically alleged that Road Equipment Company, Inc. is not domiciled in the Western District and that the alleged accident did not occur in the Western District; it is further specifically averred that there is no diversity of citizenship and no jurisdiction or venue in this court.

WHEREFORE, defendant prays that there be judgment herein dismissing the plaintiff's cause of action against Road Equipment Company, Inc. and for all general and equitable relief.

VOORHIES, LABBE, FONTE-
NOT, LEONARD & McGLAS-
SON,

By (S.) H. LEE LEONARD,
(H. Lee Leonard),
Post Office Box 3527,
Lafayette, Louisiana.

Filed: June 8, 1966.

(Title Omitted.)

No. 11,662.

**MOTIONS TO DISMISS ON BEHALF OF THE LINK
BELT COMPANY.**

TO THE HONORABLE, THE UNITED STATES DISTRICT COURT IN AND FOR THE WESTERN DISTRICT OF LOUISIANA, LAFAYETTE DIVISION:

NOW INTO COURT, through undersigned counsel, comes and appears THE LINK BELT COMPANY, sought to be made defendant in the above entitled and numbered cause, who, moves to dismiss the complaint on the following grounds:

MOTION TO DISMISS FOR LACK OF PROPER VENUE.

I.

Defendant moves to dismiss the complaint on the basis that the action is not based on diversity and neither defendants to the suit are residents of the District wherein the action is brought.

**MOTION TO DISMISS ON THE BASIS THAT THE
COMPLAINT FAILS TO STATE A CAUSE OF
ACTION ON WHICH RELIEF CAN BE GRANTED.**

II.

Alternatively; and only in the event the Court should find that there is proper venue in the West-

ern District (which is denied) then and in that event defendant moves to dismiss the complaint on the basis that the complaint does not state a claim upon which relief can be granted for the following reasons:

a) The alleged accident is alleged to have occurred in the complaint, on South Marsh Island Block 51 in the Gulf of Mexico, approximately fifty miles south of Marsh Island and, accordingly, the Death on the High Seas Act, 46 U.S.C.A. 761, et seq. will be not only the applicable but exclusive cause of action which according to the Act, has to be brought in admiralty and, accordingly, on the Admiralty side of Court without a jury.

b) The General Maritime Law is not applicable because of the exclusive remedy under the Death on the High Seas Act.

c) Article 2315 of the Louisiana Civil Code of 1870 is not applicable because the Death on the High Seas Act is the exclusive remedy.

d) The complainants, the wife and children of the deceased, are not the proper party plaintiffs inasmuch as the Death on the High Seas Act requires the personal representative to institute the action.

e) The Death on the High Seas Act limits recovery to pecuniary loss so that all other allegations of damages should be dismissed.

**ALTERNATIVELY, MOTION FOR SUMMARY
JUDGMENT.**

III.

Alternatively, and only in the event the Court should find that the suit has been brought in the proper venue and overrules the motion to dismiss as set forth in Article II herein, defendant moves for summary judgment on the basis set forth in Article II with supporting evidentiary material.

WHEREFORE, premises considered, defendant, THE LINK BELT COMPANY, mover herein, hereby prays as follows:

a) The suit be dismissed on the basis of improper venue and, alternatively, that the suit be transferred to the United States District Court for the Eastern Division of the State of Louisiana;

b) Alternatively, if the motion to dismiss for improper venue is overruled, that the petition be dismissed for failure to state a cause of action on which relief can be granted and, alternatively, that the suit be transferred to the Admiralty Docket of this Court; and

c) If the Court overrules the previous two motions, that the motion for summary judgment be granted.

AND FOR ALL GENERAL AND EQUITABLE RELIEF, ETC.

DAVIDSON, MEAUX, ONE-
BANE & DONOHOE,

By (S.) JAMES E. DIAZ,
Attorneys for the Link Belt
Company,
201 West Main Street,
Lafayette, Louisiana.

RICHARD C. MEAUX
and JAMES E. DIAZ,
Trial Attorneys.

Filed: July 28, 1966.

(Title Omitted.)

No. 11662.

JUDGMENT OF THE COURT.

The motions of defendants, on motion to dismiss for lack of proper venue and motion to dismiss on the basis that the complaint fails to state a cause of action on which relief can be granted, having been submitted to the Court and after considering the pleadings, arguments and briefs of counsel for plaintiffs and defendants,

IT IS ORDERED, ADJUDGED AND DECREED that the motion to dismiss for lack of proper venue is overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this civil action be transferred and removed to the Admiralty side of Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ella Mae Dubois Dore, as administratrix of the estate of Joseph Dore, for the benefit of herself and the minors, Rodney James, Vickie Ann and Jo Ella Dore, is under the Death on the High Seas Act, 46 U.S.C.A. Section 761, et seq., the only party plaintiff who has a standing in this Court and, accordingly, that the other party plaintiffs in this action, Ella Mae Dubois Dore, individually and as natural tutrix of the minors, Rodney James, Vickie Ann and Jo Ella Dore, be dismissed from this suit.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all items of damages referred to in the complaint herein other than for pecuniary loss sustained by the persons for whose benefit the suit is brought, shall be stricken from the complaint.

Thus Done and Signed at Lafayette, Louisiana, this
.... day of October, 1966.

(S.) R. J. PUTNAM,
District Judge.

APPROVED AS TO FORM:

LANDRY, WATKINS, COUSIN
& BONIN,

By (S.) ALFRED S. LANDRY,
Attorneys for Plaintiffs.

VOORHIES, LABBE, FONTE-
NOT, LEONARD & McGLAS-
SON,

By (S.) H. LEE LEONARD,
Attorneys for Road Equip-
ment Company.

Filed: October 26, 1966.

Filed Feb. 19, 1968.

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

CIVIL ACTION Number 11662.

**ELLA MAE DUBOIS DORE, Individually, etc.,
versus
THE LINK BELT COMPANY, et al.**

ORDER.

It having been brought to the attention of the Court that the judgment dismissing the claims of plaintiffs in the above-captioned cause brought under Article 2315 of the Louisiana Revised Civil Code of 1870, LSA-C.C. Art. 2315, did not contain an express determination by this Court that there was no just reason for delay and further did not expressly direct the entry of a judgment of dismissal, and further that at the time of ruling on the defendants' motion to dismiss said claim, the Court declared that its action was to be taken as final on this claim and the omission of such statement as required by Rule 54(b), Federal Rules of Civil Procedure, from said judgment was inadvertent, it is now:

ORDERED that the formal judgment signed by the Court on October 26th, 1966, hereinabove mentioned be and the same is hereby amended so that the dismissal of plaintiffs' claims under Article 2315 of the Louisiana Revised Civil Code of 1870 is deter-

mined and declared to be a final judgment of dismissal and it is further expressly determined by this Court that there is no just reason to delay the dismissal of such claims or the entry of judgment in accordance with such order, the whole as required by Rule 54(b), F.R.C.P.

IT IS FURTHER ORDERED that the foregoing amendment be filed and forwarded to the Clerk of the United States Court of Appeals for the Fifth Circuit, for filing in the record of this cause, the issues presented by the dismissal of such claims being pending before said court on appeal at this time.

Lafayette, Louisiana, February 14, 1968.

(S.) RICHARD J. PUTNAM,
United States District Judge.

The above and foregoing order is agreed upon and stipulated to be necessary in this cause by the undersigned counsel of record, and the said counsel further waive any objections thereto.

Lafayette, Louisiana, this 14th day of February, 1968.

LANDRY, WATKINS, COUSIN
& BONIN,

By (S.) ALFRED S. LANDRY,

(Alfred S. Landry),

Attorneys for Plaintiffs-
Appellants.

• DAVIDSON, MEAUX, ONE-
BANE & DONOHUE,

By (S.) JAMES E. DIAZ,
(James E. Diaz),
Attorneys for Defendants-
Appellee, Link Belt
Company.

VOORHIES, LABBE, FONTE-
NOT, LEONARD & McGLAS-
SON,

By (S.) H. LEE LEONARD,
(H. Lee Leonard),
Attorneys for Defendant-
Appellee, Road Equip-
ment Company, Inc.

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

October Term, 1967.

No. 24370.

D. C. Docket No. CA 11662.

**ELLA MAE DUBOIS DORE, Individually and as Natural
Tutrix of and for and on behalf of her minor children,
RODNEY JAMES DORE, VICKIE ANN DORE and
JO ELLA DORE,**

Appellants,

versus

**THE LINK BELT COMPANY, ET AL.,
Appellees.**

**Appeal from the United States District Court for the
Western District of Louisiana.**

Before GEWIN, BELL and AINSWORTH, Circuit Judges.

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

**ON CONSIDERATION WHEREOF, It is now here
ordered and adjudged by this Court that the judg-**

ment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Ella Mae Dubois Dore, individually and as Natural Tutrix of and for and on behalf of her minor children, Rodney James Dore, Vickie Ann Dore and Jo Ella Dore, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

March 25, 1968

Issued as Mandate: May 23, 1968

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24370

ELLA MAE DUBOIS DORE, Individually and as Natural
Tutrix of and for and on behalf of her minor children,
RODNEY JAMES DORE, VICKIE ANN DORE and
JO ELLA DORE,

Appellants,

versus

THE LINK BELT COMPANY, ET AL.,
Appellees.

Appeal from the United States District Court for the
Western District of Louisiana.

(March 25, 1968.)

Before GEWIN, BELL and AINSWORTH, Circuit
Judges.

AINSWORTH, Circuit Judge: The issue with which we are concerned is whether the Death on the High Seas Act, 46 U.S.C. § 761, et seq.,¹ is the exclusive

¹ The pertinent provisions of the Death on the High Seas Act follow:

46 U.S.C. § 761:

"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State . . . the personal representative of the decedent may maintain a suit

remedy of claimants in an action growing out of the death of an oil field worker which occurred on a stationary offshore drilling platform on the outer Continental Shelf of the Gulf of Mexico beyond a marine league from the Louisiana shore. Plaintiffs, who are the surviving wife and children of the deceased worker, contend that the Act, which provides for recovery only for the pecuniary loss sustained, should be supplemented by Louisiana statutory law which provides a broader remedy for damages.²

for damages in the district courts of the United States, in admiralty,"

46 U.S.C. § 762:

"The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought"

46 U.S.C. § 763:

"Suit shall be begun within two years from the date of such wrongful act"

46 U.S.C. § 766:

"In suits under this chapter the fact that the decedent has been guilty of contributory negligence shall not bar recovery, but the court shall take into consideration the degree of negligence attributable to the decedent and reduce the recovery accordingly."

46 U.S.C. § 767:

"The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone.

² Louisiana statutory law on the subject is found in Louisiana Revised Civil Code Art. 2315, which provides in pertinent part as follows:

"Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

"The right to recover damages to property caused by an offense or quasi offense is a property right which, on the death of the obligee, is inherited by his legal, instituted, or irregular heirs, subject to the community rights of the surviving spouse.

"The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor

Pursuant to motions to dismiss of defendants, The Link Belt Company and Road Equipment Company, the district court entered judgment against plaintiffs, limiting them to a claim in Admiralty for pecuniary loss under the Death on the High Seas Act.³

Plaintiffs appealed from the judgment and specify the following errors:

"The lower court erred in holding that the plaintiffs, Ella Mae Dubois Dore, individually and as natural tutrix of the minors, Rodney James, Vickie Ann and Jo Ella Dore, had no standing in court; and in holding that the exclusive remedy for the death of Joseph Dore was for 'pecuniary losses' only under the Death on the High Seas Act, 46 U.S.C.A., Section 761, et seq., in striking from the com-

of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such child or children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving; and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased. A right to recover damages under the provisions of this paragraph is a property right which, on the death of the survivor in whose favor the right of action survived, is inherited by his legal, instituted, or irregular heirs, whether suit has been instituted thereon by the survivor or not."

³ After this case was appealed the district judge, with our approval, amended his judgment to certify the question as required by Rule 54(b), Federal Rules of Civil Procedure. See *Cold Metal Process Co. v. United Eng. & Fdry. Co.*, 351 U. S. 445, 76 S. Ct. 904 (1956), where a similar certification after appeal was approved by the Supreme Court.

plaint all items of damage other than 'pecuniary loss' and in directing that this case be removed to the Admiralty side of the Court and that plaintiffs would not have a right to trial by jury."

Decedent, Joseph Dore, an oil field worker, was killed while working on a stationary offshore drilling platform on the outer Continental Shelf in the Gulf of Mexico south of the State of Louisiana, approximately fifty miles seaward from Marsh Island, when a crane which he was operating and which it is alleged was "sold, manufactured, supplied and installed" by defendants, The Link Belt Company and Road Equipment Company, collapsed and fell more than sixty feet.⁴ The widow of decedent instituted a civil action on her behalf and that of the minor Dore children, alleging negligence by defendants⁵ under the General Maritime Laws, Death on the High Seas Act, 46 U.S.C. § 761, et seq.; and Article 2315 of the Revised Civil Code of Louisiana, claiming damages for

⁴By stipulation between the parties filed subsequent to the hearing and attached to the trial judge's certification under Rule 54(b), Federal Rules of Civil Procedure, it was agreed that the work was being performed on the "outer Continental Shelf" and that the accident occurred in the following manner:

"That the decedent was a crane operator working on a crane on a pedestal on a stationary platform; That the crane was being used to unload a barge or vessel located immediately next to the stationary platform; That while a load was being lifted from the vessel with an intention to place it on the stationary platform, the crane toppled over with the decedent in the crane and fell to the barge or vessel below, which was being unloaded and the decedent was killed when he fell on the barge."

⁵There is a lack of complete diversity. Plaintiffs are citizens of Louisiana. Road Equipment Company is a Louisiana corporation. The Link Belt Company is a foreign corporation.

"loss of love and affection, loss of support and inheritance, loss of material aid and services, loss of parental guidance, loss of society and companionship, pain and suffering, anguish and shock."

Appellants contend that under the "savings-to-suitors" clause, 28 U.S.C. § 1333,⁶ and under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, et seq.,⁷ state remedies are available to them in addi-

⁶ 28 U.S.C. § 1333 provides in pertinent part:

"The district courts shall have original jurisdiction, exclusive of the courts of the States of:

"(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

⁷ The pertinent parts of the Act provide:

43 U.S.C. § 1332:

"(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

43 U.S.C. § 1333:

"(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State:

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. . . ."

tion to the remedy provided by the Death on the High Seas Act, 46 U.S.C. § 761, et seq.

Under the Death on the High Seas Act, when wrongful death occurs beyond a marine league from the shore of any state, a remedy is provided in Admiralty in the United States courts. Under the Outer Continental Shelf Lands Act, the laws of the United States are extended to the subsoil, seabed, artificial islands and fixed structures on the outer Continental Shelf. Laws of adjacent states, to the extent that they are applicable and not inconsistent with the Outer Continental Shelf Act or other federal laws, are under that Act declared to be the law of the United States. The site of decedent's death, fifty miles south of Marsh Island, Louisiana, on the Shelf, is in an area encompassed by both the Death on the High Seas Act and the Outer Continental Shelf Lands Act.

Appellants contend that the language of the Outer Continental Shelf Lands Act which makes applicable the laws of the adjacent state under certain circumstances requires an interpretation that the law of Louisiana is applicable.

Necessarily, Louisiana law must not be inconsistent with federal law to warrant this interpretation. Several inconsistencies between federal law and the law of Louisiana are apparent; for example, the law of Louisiana, which provides *inter alia* for broad remedies for wrongful death, such as loss of love and affection, etc., limits the time to one year within which

an action may be brought and bars recovery because of contributory negligence. In contrast, the provisions of the Death on the High Seas Act provide for pecuniary loss only, a two-year period in which an action may be brought, and mere diminution of damages in the event of comparative negligence.

Determination of which law is to apply to cases involving death of a maritime worker on the outer Continental Shelf presents a question of first impression for this Court. In the present case the death occurred beyond a marine league from shore. We have had several occasions, however, to resolve disputes centered around the question of whether federal or state law is applicable to torts, in which a maritime worker suffered personal injuries, occurring on the outer Continental Shelf. We have uniformly held that federal law is the applicable law. *Loffland Brothers Company v. Roberts*, 5 Cir., 1967, 386 F. 2d 540, cert. denied U. S., S. Ct. (1968); *Ocean Drilling & Exp. Co. v. Berry Bros. Oilfield Service*, 5 Cir., 1967, 377 F. 2d 511; *Pure Oil Co. v. Snipes*, 5 Cir., 1961, 293 F. 2d 60.⁸ In *Loffland*, the defendant urged that Louisiana law was applicable on the Continental Shelf, under which law recovery for physical injury would have been barred because of plaintiff's contributory negligence, as opposed to diminution of damages under the maritime concept of comparative negligence. In rejecting defendant's argument, we said (386 F. 2d at 545):

⁸ See also *Touchet v. Travelers Indemnity Company*, D. C., W. D. La., 1963, 221 F. Supp. 376.

"In *Pure Oil Co. v. Snipes*, 293 F. 2d 60 (5 Cir. 1961) this Court carefully reviewed the Outer Continental Shelf Lands Act and concluded that Congress deemed the hazards presented by the offshore drilling platforms to be maritime in nature. We therefore held that under the Act federal maritime law was to apply to torts occurring on these offshore platforms. That decision has been consistently followed by this Court."

In *Pure Oil* plaintiff fell through an open space in a platform located on the outer Continental Shelf into the ocean below and suffered severe injuries. Defendants argued that plaintiff's right to recover had prescribed under the one-year Louisiana statute. We disagreed and said that federal and not state law was pertinent. We said (293 F. 2d at 64):

"In every sense of the word this happened on the high seas. It did not happen in Louisiana. Nor did it happen in waters which Louisiana could regard as within her territorial boundaries. . . .

"We think that a consideration of both intrinsic and extrinsic factors requires the conclusion that it was the intention of Congress that (a) this occurrence be governed by Federal, not State, law, and (b) that the Federal law thereby promulgated would be the pervasive maritime law of the United

States. In connection with the latter phase—the choice by Congress of maritime law—it is again important to keep in mind that we are in an area in which Congress has an almost unlimited power to determine what standards shall comprise the Federal law.”

While it is true that *Loffland, Pure Oil Co.*, and *Ocean Drilling & Exp. Co.* relate to injuries sustained by workmen and not to their death, we do not regard this distinction as decisive. The rationale of these opinions is equally and logically applicable to torts which result in death of a worker.

Appellants' further contention that their state remedies are preserved under the “savings-to-suitors” clause of 28 U.S.C. § 1333 is not tenable. We know of no theory in law under which a site in the Gulf of Mexico more than fifty miles from the shore of Louisiana can be considered as part of the State.⁹ The conclusion is clear that there is no remedy to save under 28 U.S.C. § 1333. *Cf. Jennings v. Goodyear Aircraft Corporation*, D.C., D. Del., 1964, 227 F. Supp. 246.

⁹ The site of the accident, approximately fifty miles seaward of Marsh Island and south of the State of Louisiana, cannot conceivably be considered within the boundary of the State of Louisiana, either under the three-mile limitation of the Submerged Lands Act, 43 U.S.C. § 1301, or by virtue of the pronouncement by the United States Supreme Court in *United States v. States of Louisiana, Etc.*, 363 U. S. 1, 80 S. Ct. 961 (1960), restricting Louisiana's submerged lands rights to an area within three geographical miles from the coastline of that State (363 U. S. at 79), but leaving unsettled the location of that coastline (363 U. S. at 65, 79).

No right or remedy existed for the death on the high seas of a non-seaman maritime worker prior to the enactment of the Death on the High Seas Act. The maritime law provided no cause of action for wrongful death. *The Harrisburg*, 119 U. S. 199, 7 S. Ct. 140 (1886). When Congress had remained silent, state death statutes were recognized and enforced by Admiralty courts in claims arising from torts on the high seas. *The Hamilton*, 207 U. S. 398, 28 S. Ct. 133 (1907). With the passage of the Death on the High Seas Act, it is pertinent to inquire whether state statutes allowing for recovery for wrongful death are preempted by the Act. The issue is a novel one for this Court, and the United States Supreme Court has made no pronouncement in this regard.

The legislative history indicates that when Congress passed the Death on the High Seas Act it intended the remedy it provided to be an exclusive one. In *Higa v. Transocean Airlines*, 9 Cir., 1955, 230 F. 2d 780, 783, 784, the Court set forth the following colloquy which occurred during the debate in the House of Representatives:

"Mr. Igoe. Does not the gentleman think that he should inform the gentleman from Ohio (Mr. Ricketts) that this proceeding will be in admiralty and that there will be no jury, so that no Member of the House may have any misunderstanding about it? That question was thrashed out and it was decided best not to

incorporate into this bill a jury trial because of the difficulties in admiralty proceedings.' (Page 4482. Emphasis added.)

"Mr. Moore of Virginia. * * * The purpose of this bill, as I understand it, is to give exclusive jurisdiction to the admiralty courts where the accident occurs on the high seas.

"Mr. Volstead. That is it.' (Page 4483.) Congressional Record, Volume 59, Part V."

The Ninth Circuit concluded, "Construing the Act's words, if Higa's diversity proceeding at common law were permitted by the High Seas Act it would make superfluous its words 'in admiralty.'"¹⁰

Appellants call our attention to several federal district court decisions which give effect to state wrongful death statutes in addition to remedies under the Death on the High Seas Act.¹¹ However, there are other federal district courts whose holdings are to the contrary.¹² The two United States Supreme Court

¹⁰ Cf. *Middleton v. Luckenbach S. S. Co.*, 2 Cir., 1934, 70 F. 2d 326.

¹¹ *Safir v. Compagnie Generale Transatlantique*, D. C., E. D. N. Y., 1965, 241 F. Supp. 501; *Cunningham v. Bethlehem Steel Co.*, D. C., S. D. N. Y., 1964, 231 F. Supp. 934; *Abbott v. United States*, D. C., S. D. N. Y., 1962, 207 F. Supp. 468; *Williams v. Moran, Proctor, Mueser & Rutledge*, D. C., S. D. N. Y., 1962, 205 F. Supp. 208.

¹² For holdings contrary to the above cited cases, see *Montgomery v. Goodyear Tire & Rubber Company*, D. C., S. D. N. Y., 1964, 231 F. Supp. 447; *Jennings v. Goodyear Aircraft Corporation*, D. C., Del., 1964, 227 F. Supp. 246; *Devlin v. Flying Tiger Lines, Inc.*, D. C., S. D. N. Y., 1963, 220 F. Supp. 924; *Wilson v. Transocean Airlines*, D. C., N. D. Calif., 1954, 121 F. Supp. 85; *Blumenthal*

cases cited by appellants, *Just v. Chambers*, 312 U. S. 383, 61 S. Ct. 687 (1941) and *Kernan v. American Dredging Company*, 335 U. S. 426, 78 S. Ct. 394 (1958), are inapposite to the present case. Both cases are concerned with torts occurring within state territorial waters, not on the high seas. In *Just v. Chambers*, *supra*, a yacht owner who subsequently died attempting to limit his liability in claims for injuries sustained by passengers as a result of his alleged negligence on navigable waters within the territorial limits of the State of Florida. In reversing the Fifth Circuit and affirming the district court's finding that under a statute of Florida the claimants' causes of action survived the owner's death, the Supreme Court recognized the "authority of the States to create rights and liabilities with respect to conduct within their borders, when the state action does not run counter to federal laws or the essential features of an exclusive federal jurisdiction." The Court held that it saw "no reason why, under this test, the Florida rule in providing for the survival of a cause of action against a deceased tortfeasor for injuries occurring on navigable waters within the limits of the State should not be applied." (312 U. S. at 391.) *Kernan v. American Dredging Company*, *supra*, is a limitation proceeding in which a claim for damages was filed as the result of the death of a seaman who lost his life on a tug in the Schuylkill River in Philadelphia. Apparently the language to which appellants refer is that contained at page 430

v. United States, D. C., E. D. Pa., 1960, 189 F. Supp. 439; *Echavarria v. Atlantic & Caribbean Steam Nav. Co.*, D. C., E. D. N. Y., 1935, 10 F. Supp. 677.

in footnote 4, where the Supreme Court in dictum says, "Presumably any claims, based on unseaworthiness, for damages accrued prior to the decedent's death would survive, at least if a pertinent state statute is effective to bring about a survival of the seaman's right." That a state death statute will be enforced in Admiralty where death occurs as the result of tortious conduct occurring upon navigable waters of a state within that state's boundaries is of course a basic principle recognized in the savings clause of 28 U.S.C. § 1333, and the uniformity of maritime law is not offended by such enforcement. See *The M/V "Tungus" v. Skovgaard*, 358 U. S. 588, 79 S. Ct. 508 (1959). However, this is not to say that such a state statute would be effective where death occurs not on the territorial waters of a state, not within a marine league from its shores, but more than fifty miles seaward of the shores of that state.

We hold, therefore, that the Death on the High Seas Act provides the exclusive remedy in this case.¹³

AFFIRMED.

¹³ Because of our holding we need not consider appellants' further contentions, not strenuously urged, that other remedies such as the law of the domicile of defendants might be applicable, or that because the action includes a claim for breach of implied warranty state law should apply as no such remedy exists under the Death on the High Seas Act.

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 24370.

**ELLA MAE DUBOIS DORE, Individually and as Natural
Tutrix of and for and on behalf of her minor children,
RODNEY JAMES DORE, VICKIE ANN DORE and
JO. ELLA DORE,**

Appellants,

versus

**THE LINK BELT COMPANY, ET AL.,
Appellees.**

**Appeal from the United States District Court for the
Western District of Louisiana.**

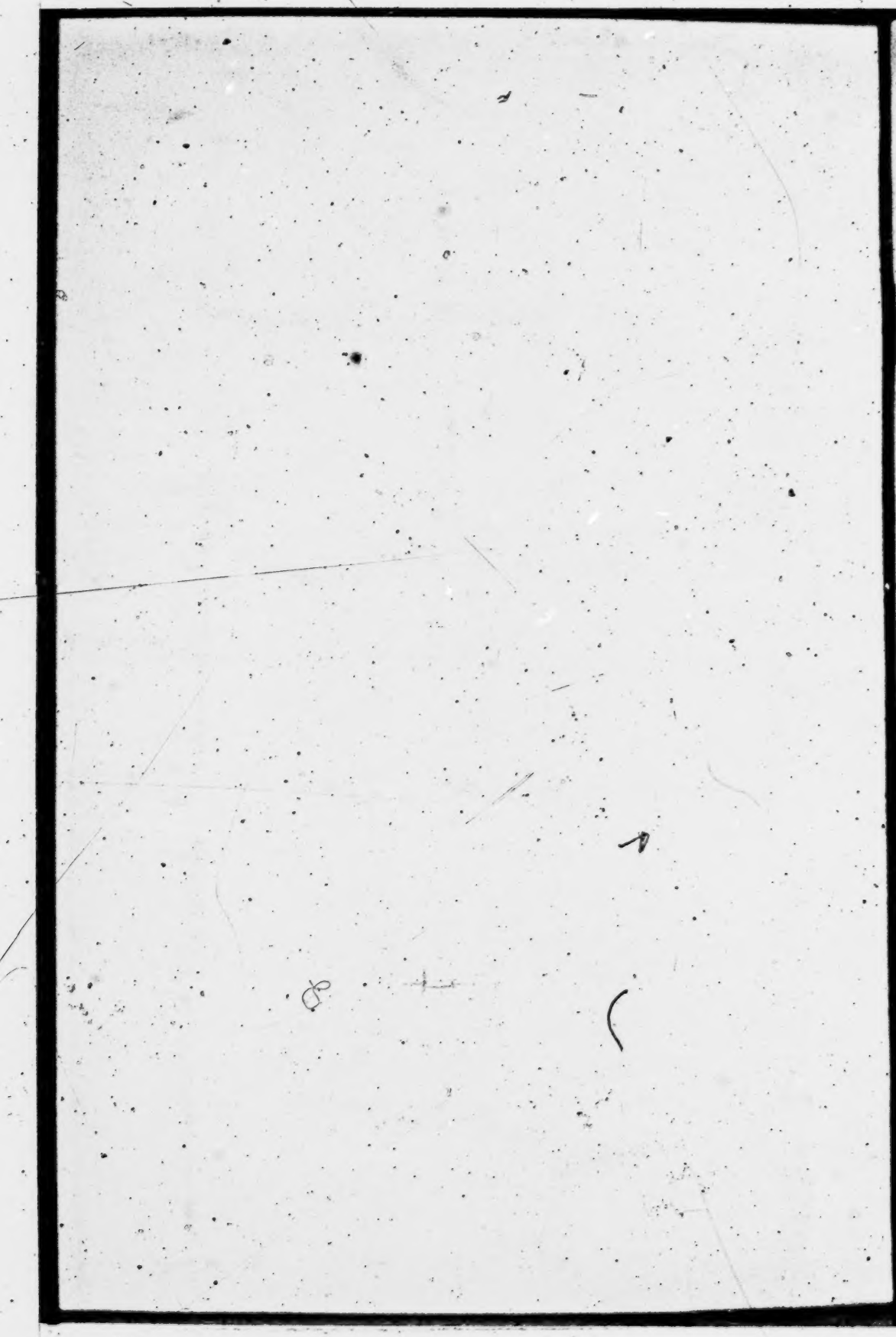
(May 15, 1968.)

PETITION FOR REHEARING.

Before GEWIN, BELL and AINSWORTH, Circuit Judges.

PER CURIAM:

**IT IS ORDERED that appellants' petition for re-
hearing in this cause be, and the same is hereby,
DENIED.**



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No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL.,
and
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,

versus

AETNA CASUALTY AND SURETY COMPANY, ET AL.,
and
THE LINK BELT COMPANY, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
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INDEX.

	Page
CITATIONS TO OPINIONS BELOW	2
JURISDICTION	3
QUESTION INVOLVED	4
STATUTES INVOLVED	4
STATEMENT OF THE CASE	7
Decision in the Court Below in Rodrigue	9
Decision in the Court Below in Dore	12
REASONS FOR GRANTING THE WRIT	12
CONCLUSION	25
CERTIFICATE OF SERVICE	26
APPENDIX A—(Judgments of Dismissals and Oral Reasons for Judgment)	27
APPENDIX B—(Opinion and Judgment of United States Court of Appeals)	37
APPENDIX C—(Opinion in the Dore Case)	41

II

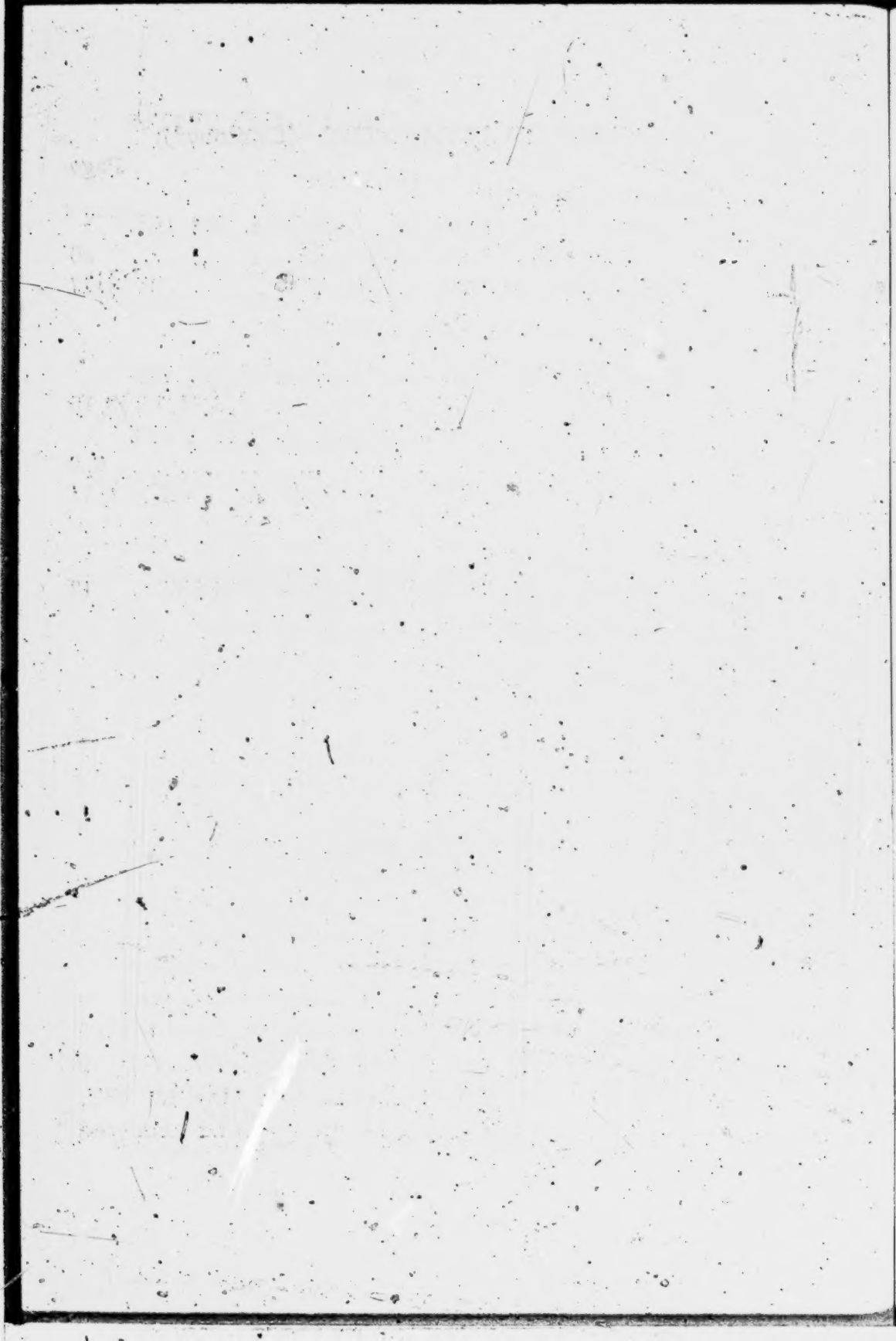
TABLE OF AUTHORITIES.

	Page
Cases:	
Abbott v. U. S., 207 F. Supp. 468 (S.D.N.Y., 1962), 1962 A.M.C. 2350	18
Byrd v. Napoleon Avenue Ferry, 152 F. Supp. 573 (E.D.La. 1954) (5th Cir. 1954)	20
Dore v. Link Belt Co., 391 F.2d 671, 5 Cir., 1968	2, 3, 10, 11, 12, 22, 23
Doyle v. Albatross Tanker Corporation, 367 F.2d 465, 1967 A.M.C. 201	13, 24
Gillespie v. U. S. Steel Corporation, 379 U.S. 148 (1964)	13
Hess v. U. S., 361 U.S. 314, 1960 A.M.C. 527	20
Higa v. Transocean Airlines, 230 F.2d 780 (1965); cert. den. 352 U.S. 802	10, 15, 22
Ignier v. Cie de Transports, 323 F.2d 257; cert. den. 376 U.S. 949	9
Just v. Chambers, 312 U.S. 383, 61, 687, 1941 A.M.C. 430	21
Lindgren v. U. S., 281 U.S. 38 (1930)	13
Loffland Bros. v. Roberts, 5th Cir., 1967, No. 23,835	23
McLaughlin v. Blidberg Rothschild Co., 156 F. Supp. 379 (S.D.N.Y. 1957)	18, 19
Ocean Drilling & Exp. Co. v. Berry Bros. Oilfield Service, 5 Cir., 1967, 377 F.2d 511	23
Parker v. Smith, 147 So.2d 407 (La. App. 1963)	8
Pure Oil v. Snipes, 293 F. 2d 60	23
Romero v. International Terminal Operating Co., 358 U.S. 354, 1958 A.M.C. 832	19
Silverman v. Travelers, 277 F.2d 257 (5th Cir. 1960)	8
Tungus v. Shovgoard, 358 U.S. 588, 1958 A.M.C. 813	20

III

TABLE OF AUTHORITIES—(Continued):

	Page
Cases—(Continued):	
United Pilots Association v. Helecki, 358 U.S. 613, 1959 A.M.C. 588	20
Ward, E. B., Jr., The, 17 Fed. 456	15, 16, 17
Statutes:	
Death on The High Seas Act, 46 U.S.C. 761- 768	4, 8, 11, 12, 13, 15
Outer Continental Shelf Lands Act, 43 U.S.C. 1333	6, 8
Louisiana Death Act, La. Civ. Code, Art. 2315 ..	6, 11
Other:	
Comment, supra, 60 Colum. L. Rev. at 536-37 ..	18



SUPREME COURT OF THE UNITED STATES

October Term, 1968.

No.

**PAULETTE BOUDREAUX RODRIGUE, ET AL.,
and
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,
versus**

**AETNA CASUALTY AND SURETY COMPANY, ET AL.,
and
THE LINK BELT COMPANY, ET AL.,
Respondents.**

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

This is a joint petition for writ of certiorari as authorized by Supreme Court rule 23(5).

Petitioners pray that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Fifth Circuit, entered and rendered in the *Rodrigue* case on May 16, 1968, and its decision and judgment entered and rendered

in the *Dore* case on March 25, 1968, rehearing denied May 15, 1968.

CITATIONS TO OPINIONS BELOW.

The Rodrigue Case

The judgments of dismissal by the United States District Court for the Eastern District of Louisiana, Baton Rouge, Division, in the consolidated cases, "Paulette Boudreaux Rodrigue, et al. vs. Aetna Casualty and Surety Company, et al.", are not reported, but appear in the *Rodrigue* record at pages 103 and 104, and the oral reasons for the judgments appear in the *Rodrigue* record at pages 93 through 100; the two judgments and the oral reasons are printed in Appendix A hereto.

The opinion of the United States Court of Appeals for the Fifth Circuit, dated May 16, 1968, in the *Rodrigue* case is officially reported at F.2d, 1968 and appears in the record at pages 120-121 and is printed in Appendix B hereto. Several weeks prior to the argument of the instant case the Court of Appeals for the Fifth Circuit handed down a decision on the same issue in the case entitled *Dore vs. Link Belt Co.*, 391 F.2d 671. In the *Rodrigue* case the Court for its opinion simply referred to the opinion in the *Dore* case which is printed in Appendix C hereto.

The Dore Case

The judgment of dismissal by the United States District Court for the Western District of Louisiana, Lafayette Division, in the matter entitled "Ella Mae Dubois Dore, Individually, etc. vs. The Link Belt Company, et al.", Civil Action No. 3109, is not reported but appears in the *Dore* record at pages 51 and 52. The judgment was dated October 26, 1966, and was amended on February 14, 1968 and certified as a final judgment on the latter date.

The opinion of the United States Court of Appeals for the Fifth Circuit in *Dore v. Link Belt Company*, 391 F.2d 671, dated March 25, 1968, made final on May 15, 1968, appears in the *Dore* record at pages 58 thru 70 and is printed in Appendix C hereto.

JURISDICTION.

The Rodrigue Case

The judgment of the Court of Appeals was made and entered on May 16, 1968; it appears in the *Rodrigue* record at page 122 and is printed in Appendix B hereto. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

The Dore Case

The judgment of the Court of Appeals in the *Dore* case was made and entered on March 25, 1968, with petition for rehearing denied on May 15, 1968. The judgment appears in the *Dore* record at page 72 and in Appendix C hereto. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION INVOLVED.

Whether the Death on the High Seas Act is the exclusive remedy for death on an artificial island in the Outer Continental Shelf, or, on the other hand, whether the Death on the High Seas Act can be supplemented by the law of the adjacent state which is expressly extended to the artificial islands by the Outer Continental Shelf Lands Act?

Phrased differently, the issue can be stated: Whether an action can be maintained for the non-pecuniary losses, e.g. loss of love, and affection, resulting from death on an artificial island in the Outer Continental Shelf when those losses are recoverable under the law of the adjacent state which is extended to the artificial islands by the Outer Continental Shelf Lands Act but are not recoverable under the Death on the High Seas Act?

STATUTES INVOLVED.

Pertinent portions of the Statutes involved are:

1. The Death on the High Seas Act, 46 U.S.C. 761-768

"§ 761. Right of action; where and by whom brought

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Colum-

bia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person or corporation which would have been liable if death had not ensued.

§ 762. Amount and apportionment of recovery

The recovery in such suit shall be a fair and just compensation for the *pecuniary* loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

§ 764. Rights of action given by laws of foreign countries

Whenever a right of action is granted by the law of any foreign State on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the courts of the United States without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding.

§ 767. Exceptions from operation of chapter

~~The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone.~~

2. The Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq.

"§ 1331(a)(2):

To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf and artificial islands and fixed structures thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margins of the Outer Continental Shelf * * *."

3. The Louisiana Death Act, Louisiana Civil Code, Article 2315

"The right to recover damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor of: (1) the

surviving spouse and child or children of the deceased, or either such spouse or such child or children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving; and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased."

STATEMENT OF THE CASE.

The Rodrigue Case

For the death of Butley J. Rodrigue which occurred on March 7, 1964, his widow and two children brought three suits in the United States District Court for the Eastern District of Louisiana.

The death occurred when Mr. Rodrigue fell from high in the derrick of a drilling rig positioned on a fixed structure (artificial island) located in the Outer Continental Shelf approximately twenty-eight miles south of the Louisiana coastline. Mr. Rodrigue landed on the structure floor sustaining crushing injuries which resulted in his immediate or almost immediate death. He never came into contact with the water.

The drilling rig was at the time owned and operated by Mayronne Drilling Company which was insured by Aetna Casualty and Surety Company.

Humble Oil and Refining Company was the owner of the structure and the mineral lease involved. Mr. Rodrigue was an employee of the Loomis Hydraulic Testing Company which had been called by Humble to come onto the structure to perform a test on the drill pipe then being used by Mayronne.

It was alleged in the three suits (two civil actions and one in admiralty pursuant to the Death on the High Seas Act, 46 U.S.C. 761-768) that Mr. Rodrigue died in the course of performing the test and that his death was caused by the joint negligence of Mayronne and Humble.

The reason for bringing more than one suit for the same death was to obtain full recompense for all of the damages sustained because of the death of Mr. Rodrigue. The two civil actions, one against Humble and Aetna with Federal jurisdiction based on diversity of citizenship and the other against Mayronne Drilling Company with Federal jurisdiction based on the Outer Continental Shelf Lands Act, 43 U.S.C., 1333 (b), are brought pursuant to the Louisiana Death Act, Article 2315 of the Louisiana Civil Code. The Louisiana Death Act grants a cause of action not only for the pecuniary losses sustained as a result of the death but also for loss of society, love, companionship, and affection. See for example, *Silverman v. Travelers*, 277 F.2d 257 (5th Cir., 1960); *Parker v. Smith*, 147 So.2d 407 (La. App. 1963). The Death on the High Seas Act only grants remuneration for pecuniary losses. See 46 U.S.C. 762, and see

for example, *Ignier v. Cie de Transports*, 323 F.2d 257; cert. den. 376 U.S. 949.

The three cases were consolidated for purposes of trial with the jury to hear the two Civil Actions and the Judge in Admiralty to apply the Death on the High Seas Act.

On the morning of the trial, motions to dismiss the Civil Actions were filed by the defendants and were granted, the trial judge holding that the Death on the High Seas Act is the exclusive remedy for death occurring on an artificial island in the Outer Continental Shelf even though the Outer Continental Shelf Lands Act expressly extends the law of the adjacent state to the artificial islands.

Then the Court tried the admiralty action pursuant to the Death on the High Seas Act, and finding Mayronne solely at fault, awarded plaintiff the full amount of the pecuniary losses sustained by the death of Butley Rodrigue. The Court's opinion in the admiralty action is reported at 266 F. Supp. 1.

Plaintiff, seeking also recompense of the non-pecuniary losses compensable under the state death act, appealed the dismissal of the two Civil Actions.

Decision in the Court Below in Rodrigue.

The United States Court of Appeals for the Fifth Circuit affirmed holding that "the exclusive remedy

under the circumstances is the Death on the High Seas Act".

Several weeks prior to the argument of the *Rodrigue* case in the Court of Appeals, that court, the Fifth Circuit, handed down a decision on the same issue in the case entitled *Dore vs. Link Belt Co.*, 5th Cir., 1968, 391 F.2d 671 [No. 24370]. In that case the issue of whether the Death on the High Seas Act was the exclusive remedy for death of an offshore worker on an artificial island in the Outer Continental Shelf or, on the other hand, whether the death statute of the adjacent state, extended by the Outer Continental Shelf, Lands Act, could supplement the Death on the High Seas Act had been certified by the district court to the Fifth Circuit. The Fifth Circuit, in the *Dore* case, ruled that the Death on the High Seas Act was the exclusive remedy, ostensibly relying on a Ninth Circuit case, *Higa vs. Transocean Airlines*, 230 F.2d 780 (1956), cert. den., 352 U.S. 802. (But such reliance was misplaced because the *Higa* death did not occur in the Outer Continental Shelf but rather occurred in the open ocean at a place where no statute or jurisprudence had extended the applicability of the state death act—in fact the court in the *Higa* case specifically stated that had there been such a statute or jurisprudence the state law would have supplemented the Death on the High Seas Act.)

The Fifth Circuit in the *Rodrigue* case simply referred to its very recent decision in the *Dore* case and affirmed the dismissal of the civil actions.

The Dore Case

The Dore case is an action for the death of Joseph Dore which occurred on March 14, 1965. His widow and children filed suit in the United States District Court for the Western District of Louisiana.

The death occurred when Mr. Dore fell from his position in a crane attached to a fixed platform located on the Outer Continental Shelf approximately 50 miles south of the Louisiana coastline. It is further alleged that the crane which Mr. Dore was operating collapsed and fell a distance of more than 60 feet to the deck of a vessel which was moored to the fixed platform. Mr. Dore never came into contact with the water.

Petitioner brought the action against The Link Belt Company and Road Equipment Company, Inc. for negligence in designing, manufacturing, assembling, selling, installing and servicing the crane which was involved in the accident and which caused the death of Joseph Dore, and the action is also brought under expressed and implied warranties as manufacturers, assemblers, sellers and installers of the crane. Petitioner brought the action under the General Maritime Laws, the Death on the High Seas Act, 46 U.S.C.A. 761, et seq., and under Article 2315 of the Revised Civil Code of the State of Louisiana.

The court, on Motions to Dismiss filed by the defendants, rendered judgment on October 26, 1966, restricting the plaintiffs' claims to the Death on the

High Seas Act, 46 U.S.C.A. 761, et seq., and striking from the complaint all items of damages other than pecuniary loss sustained.

Petitioner, seeking also to maintain her cause of action under the applicable state death act in addition to the Death on the High Seas Act, appealed the dismissal of the civil action.

Decision of the Court Below in Dore.

The United States Court of Appeals for the Fifth Circuit affirmed, holding that the exclusive remedy of plaintiff in *Dore* was the Death on the High Seas Act.

REASONS FOR GRANTING THE WRIT.

Contrary to the decision of the Court of Appeals in the *Rodrigue* case and the *Dore* case, other circuits and other courts hold that the Death on the High Seas Act is not an exclusive remedy and that it does not pre-empt the field of recovery for death.

The language contained in the Death on the High Seas Act *specifically provides* that state rights of action or remedies for death shall not be affected by the act! The Death on the High Seas Act provides:

767. Exceptions from operation of chapter

"The provisions of any State statute giving or regulating rights of action or remedies for death

shall not be affected by this chapter." (46 U.S.C. Section 767.)

The Second Circuit Court of Appeals in the case of *Doyle vs. Albatross Tanker Corporation*, 367 F.2d 465, 1967 A.M.C. 201, had under consideration the situation in which a seaman had been killed on the high seas. Though his administrators had brought an action under the Jones Act, they wished to supplement that action by also suing the employer under the Death on the High Seas Act so as to take advantage of rights allowed under the Death on the High Seas Act which were not available under the Jones Act. The defendant there contended that either the Jones Act or the Death on the High Seas Act should be the exclusive remedy and cited *Lindgren vs. U. S.*, 281 U.S. 38 (1930) and *Gillespie v. U. S. Steel Corporation*, 379 U.S. 148 (1964). The Court readily distinguished *Lindgren* and *Gillespie* stating that the congressional intent was that as to deaths on the high seas the remedies were not exclusive. The Court ruled:

"Moreover, contrary to appellants' contentions, it appears to be the settled law of the lower federal courts, expressed in numerous cases, that both statutory remedies may be availed of for the purpose of recovering damages for the wrongful deaths of seamen caused by occurrences on the high seas, and that the action in admiralty created by the Death on the High

Seas Act may be pursued by the personal representative of a deceased sailor as well as the action at law provided for in the Jones Act. See, e.g., *Chermesino vs. Vessel Judith Lee Rose, Inc.*, 211 F. Supp. 36 (D. Mass., 1962, aff'd, 317 F. (2d) 927 (1 Cir.), cert. denied, 375 U.S. 931 (1963); *Moore-McCormack Lines, Inc. vs. Richardson*, 1962 A.M.C. 804, 295 F. (2d) 583 (2 Cir. 1961), cert. denied, 368 U.S. 989, 1962 A.M.C. 2211 (1962); *Whitaker vs. Blidberg Rothschild Co., Inc.*, 1961 A.M.C. 773, 195 F. Supp. 420 (E.D. Va.) aff'd, 1962 A.M.C. 678, 296 F. (2d) 554 (4 Cir., 1961); *Civil vs. Waterman S. S. Corp.*, 1955 A.M.C. 21, 217 F. (2d) 94 (2 Cir., 1954); *Middleton vs. Luckenbach S. S. Co.*, 1934 A.M.C. 649, 70 F. (2d) 326 (2 Cir., 1934); *Ridgedell vs. Olympic Towing Corp.*, 1962 A.M.C. 1831, 205 F. Supp. 952 (E.D. La., 1962). *Petition of Gulf Oil Corp.*, 1960 A.M.C. 341, 172 F. Supp. 911 (S.D.N.Y., 1959); *McLaughlin vs. Blidberg Rothschild Co., Inc.*, 1959 A.M.C. 1385, 167 F. Supp. 714 (S.D.N.Y., 1958); *Tetterton vs. Arctic Tankers, Inc.*, 1954 A.M.C. 397, 116 F. Supp. 429 (E.D. Pa., 1953); *Syville vs. Waterman S. S. Corp.*, 1949 A.M.C. 1578, 83 F. Supp. 718 (S.D.N.Y. 1948); *Four Sisters*, 1947 A.M.C. 1623, 75 F. Supp. 399 (D. Mass., 1947). The text writers agree with this analysis. See 1 Benedict, Admiralty, 384 (6th ed., 1940); 2 Norris, Law of Seamen, 775-77 (2d ed., 1962); Gilmore & Black, The Law of Admiralty, 304 (1957)."

In *Higa vs. Transocean Airlines*, 230 F.2d 780 (1965) cert. den. 352 U.S. 802, a plane on its way to Hawaii crashed in the high seas and caused the death of Higa. Higa had been a citizen of Hawaii. His administrators brought suit seeking recovery under the Death on the High Seas Act and also recovery under the Hawaiian wrongful death statute. The Court took special note that the plane had been owned not by an Hawaiian corporation but by a California corporation. The Court dismissed the action based on the Hawaiian Code because "there is no provision of that Code or decisions of the Hawaiian Courts making it applicable to death on the high seas beyond the territorial waters" 230 F.2d at 781. This language is most favorable to petitioners in the instant cases inasmuch as there is a provision of law, the Outer Continental Shelf Lands Act specifically applying the Louisiana Death Act to the locality where the death occurred and there is a decision, *The E. B. Ward, Jr.*, 17 Fed. 456, applying the Louisiana Death Act to death on the high seas.

In *Higa* the Court ruled that the Death on the High Seas Act did not in any way preempt or disturb or otherwise affect any existing other death remedies. The Court, in that connection, reviewed the legislative history of the Death on the High Seas Act and stated that Section 767 of the Act entitled "Exceptions from operation of this chapter" (which section provides "the provision of any state statute giving or regulating rights of action or remedies for death shall not be affected by this chapter") meant precisely

ly what it said and that the legislator most responsible for the act no doubt had in mind preserving and leaving unaffected those causes of action allowed by the state death act. The Court cited some of the cases already on the books at the time of the passage of the Death on the High Seas Act which had allowed recovery pursuant to state death acts for deaths occurring on the high seas and noted that the legislator no doubt had those cases in mind. Among those cases the Court listed the heretofore referred to Louisiana case, *The E. B. Ward, Jr.*, 17 Fed. 456. The Court ruled:

"In considering this contention it is of importance that the High Seas Act deprived no state or federal court of a then existing right. As to the state courts 46 U.S.C.A. sec. 767 provides:

Sec. 767. Exceptions from operation of chapter. The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter.

As originally drafted, the bill had an added clause limiting the state to acts in its own waters, reading: 'as to causes of action accruing within the territorial limits of any state'. Representative Mann offered an amendment striking out this clause. Mann gave as his reason for striking out the limiting clause that it was to save state statutes giving jurisdiction in high seas death cases. Some opposed because they wanted the Act to be exclusive. Others agreed to the amend-

ment on the ground that Section 767 as passed would be held invalid on the ground of the constitutional control of Congress discussed above. Congress agreed with Mann who offered the amendment and the limitation was stricken from the bill.

Further, Mann no doubt had in mind some one of the federal cases, holding that the laws of the state controlled the action of persons within ships on the high seas and had construed their death statutes as applying there. *Southern Pac. Co. vs. De Valle Da Costa*, 1 Cir., 1911, 190 F. 689; *International Nav. Co. v. Lindstrom*, 2 Cir. 1903, 123 F. 475; *The James McGee*, S.D.N.Y. 1924, 300 F. 93; *The E. B. Ward, Jr.*, C.C.E.D.La. 1883, 17 F. 456. (Emphasis added.)

Even if Congress had not agreed with the interpretation of the proponent of the amendment, we would hesitate to construe the exceptive clause as depriving the states of the then existing jurisdictions shown as exercised in the above cited cases."

The court's citation (above) of *The E. B. Ward, Jr.*, which had applied the Louisiana Death Act to a death occurring on the high seas as one of the cases showing the then existing jurisdiction of the state courts for which the last section of the Death on the High Seas Act was enacted is a further pronouncement that the Death on the High Seas Act is not the exclusive remedy in the instant case.

There are additional numerous decisions of the district courts touching the question at issue. For example, the court in *Abbott vs. U. S.*, 207 F. Supp. 468 (S.D.N.Y. 1962), 1962 A.M.C. 2350 ruled:

"The Supreme Court held that before the DHSA there was no action for wrongful death under the general maritime law. *Western Fuel Co. vs. Garcia*, 257 U.S. 233 (1921); *Harrisburg*, 119 U.S. 199 (1886). However, admiralty courts in the absence of the DHSA invoked state wrongful death statutes to grant such recovery. *Western Fuel Co. vs. Garcia*, *supra*, (death in territorial waters); *Hamilton*, 207 U.S. 398 (1907) (death on high seas). The DHSA created a federal cause of action for wrongful death on the high seas, and, when death occurs in territorial waters, preserved the rights given by the wrongful death statute of that state. 46 U.S. Code, sec. 767. It is generally agreed that the DHSA does not preempt the field of recovery for injuries sustained on the high seas which result in death." (Emphasis added) See Comment, *supra*, 60 Colum. L. Rev. at 536-37, and authorities cited.

In *McLaughlin vs. Blidberg Rothschild Company*, 156 F. Supp. 379 (S.D.N.Y. 1957) and in the companion case (*McLaughlin vs. Blidberg Rothschild Company*, 156 F. Supp. 381) involving deaths on the high seas in which the plaintiffs claimed pecuniary losses under the Death on the High Seas Act requesting trial by the Judge in admiralty and also brought suit,

with trial by jury, under the Japanese law which allows recovery not only for pecuniary losses but for the other damages as well. The procedure there was the same as requested by appellant in the instant case in the court below. In the *McLaughlin* cases the court allowed the procedure and ordered a joint trial of the civil and admiralty actions inasmuch as there were some common issues involved.

Thus it is clearly seen that the Death on the High Seas Act is not an exclusive remedy.

Certainly, in light of the cases cited and referred to above it can not be said that it is inconsistent with federal laws and regulations for state law to grant additional remedies in death cases to what is available under federal law. Additionally, see *Romero vs. International Terminal Operating Co.*, 358 U.S. 354, 1958 A.M.C. 832, wherein this Court stated that state death statutes which grant more than what would have been granted by the bare federal maritime law are not "inconsistent" with federal law or federal maritime law. The Court stated:

"It is true that state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system. But this limitation still leaves the States a wide scope. State-created liens are enforced in admiralty. State remedies for wrongful death and state statutes providing for the survival of actions, both historically absent from the relief of-

ferred by the admiralty, have been upheld when applied to maritime causes of action. Federal courts have enforced these statutes. State rules for the partition and sale of ships, state laws governing the specific performance of arbitration agreements, state laws regulating the effect of a breach of warranty under contracts of maritime insurance—all these laws and others have been accepted as rules of decision in admiralty cases, even, at times, when they conflicted with a rule of maritime law which did not require uniformity.” (Emphasis added.)

As seen in the quoted language above, wrongful death is not an area of law requiring absolute uniformity; especially is this true when the Federal Death on the High Seas Act provides a uniform basic recovery with the State Death laws, where available, supplementing the basic recovery.

The state death acts are applied regularly in admiralty. See, for example *Tungus v. Shougaard*, 358 U.S. 588, 1958 A.M.C. 813; *United Pilots Association v. Helecki*, 358 U.S. 613, 1959 A.M.C. 588; *Hess vs. U. S.*, 361 U.S. 314, 1960 A.M.C. 527; *Byrd vs. Napoleon Avenue Ferry*, 152 F. Supp. 573 (E.D.La. 1954); aff. 227 F.2d 958 (5th Cir., 1954). All of the above cases, and many, many others, illustrate that in a federal jurisdiction, i.e. over the navigable waters of the United States, the state death acts, which differ from state to state, are regularly used in actions for wrongful death.

Similarly, a case most in point is the decision of the United States Supreme Court in the case of *Just v. Chambers*, 312 U.S. 383, 61, 687, 1941 A.M.C. 430. In that case the court had before it the then novel question of whether in an admiralty proceeding the causes of action for personal injury die with the person or whether, on the other hand, a state survival statute could be applied in admiralty so as to preserve the claim. In dealing with that question the Supreme Court ruled:

"For, while the injury occurred on navigable waters, these were within the limits of Florida whose legislation provided that the cause of action should survive. And it is not a principle of our maritime law that a court of admiralty must invariably refuse to recognize and enforce a liability which the State has established in dealing with a maritime subject. *On the contrary, there are numerous instances in which the general maritime law has been modified or supplemented* (emphasis added) *by state action, as e.g. in creating liens for repairs or supplies furnished to a vessel in her home port. The Lottawanna, 88 U.S. 558, 580; The J. E. Rumbell, 148 U.S. 1, 12.* With respect to maritime torts we have held that the State may modify or supplement the maritime law by creating liability which a court of admiralty will recognize and enforce when the state action is not hostile to the characteristic features of the maritime law or inconsistent with federal legislation. *The City of Norwalk, 55 Fed.*

98; *Western Fuel Company v. Garcia*, 257 U.S. 232, 242; *Great Lakes Company v. Kierejewski*, 261 U.S. 479, 1923 A.M.C. 441; *Vancouver Steamship Co. v. Rice*, 288 U.S. 445, 1933 A.M.C. 487."

Immediately before the portion of the opinion above, the Supreme Court very pertinently (here) observed:

"The 'Death on the High Seas' Act, 46 Ma-
son's U.S.C., secs. 761-768, is not applicable, as it
occupies a limited field *and even as to wrongful
death provides that the provisions of state stat-
utes shall not be affected.*" (Emphasis added.)

Moreover, in the *Dore* case, the case to which the Fifth Circuit referred for an opinion in the *Rodrigue* case the Fifth Circuit apparently relied on and quoted from the above referred to *Higa* case, but the language, the exchange between the legislators, that is quoted from the *Higa* case in the *Dore* case for the proposition that the Death on the High Seas Act is the exclusive remedy is *not* pertinent to that issue! In that quoted language, the court in the *Higa* case was dealing with an *additional* issue that was present in the *Higa* case, to-wit: whether a Death on the High Seas Act case could be heard by a jury in a civil action or whether, on the other hand, it could be heard only in admiralty by the judge alone. Properly, the *Higa* court quoted the congressmen in ruling that the Death on the High Seas Act must be heard in admiralty. But this quoted language has nothing to do with whether the Death on the High Seas Act is an ex-

clusive remedy—yet that is the issue for which the Fifth Circuit in the *Dore* case cites the quoted exchange between the congressmen as controlling! See the *Dore* case, at p. 50, Appendix C (Paragraph beginning "The legislative history . . .").

Also, the holdings of the Fifth Circuit in the three additional cases (*Loffland Bros. vs. Roberts*, 5th Cir., 1967, No. 23,835, 386 F.2d 540, *Ocean Drilling & Exp. Co. vs. Berry Bros. Oilfield Service*, 5 Cir., 1967, 377 F.2d 511; and *Pure Oil Co. v. Snipes*, 5 Cir., 1961, 293 F.2d 60) cited by it at the end of its opinion in the *Rodrigue* case do not stand for the proposition that the Death on the High Seas Act is the exclusive remedy. In each of these three cases, the defendant was contending that the exclusive remedy was Louisiana Law. In each of the cases, however, the Louisiana Law would not have allowed recovery. In *Snipes*, the Statute of Limitations, (prescription) had run on the Louisiana action, whereas the Federal doctrine of laches will allow the action to be maintained. In the *Ocean Drilling* case, the only question involved was whether the exclusive remedy provisions in the Longshoremen and Harbor Workers' Compensation Act which had been specifically, by statute, extended to cover the area in question, prohibit a claim by a third party tortfeasor for contribution from the injured employee's employer who was an alleged tortfeasor. The contention that Louisiana jurisprudence was applicable was rejected; obviously, Louisiana Law could not be involved to interpret the Federal Statute. In *Loffland*

Bros., there had been a finding of contributory negligence which would bar recovery if the Louisiana action were the exclusive remedy. In each of those cases, the Fifth Circuit simply denied the defendants' contentions that the Louisiana law was the exclusive remedy and thus allowed the case to be pursued under Federal law. The issue in those cases was not whether the Federal law was the exclusive remedy. On the contrary, the issue was whether Louisiana law was the exclusive remedy, and the Fifth Circuit consistently held that Louisiana law was not the exclusive remedy. The holdings of those cases do not have any effect on the issue as to whether both remedies can be applied.

There is nothing whatsoever unusual in allowing cumulative remedies for the same incident. In fact, it is the rule rather than the exception in maritime cases. As is seen in *Doyle vs. Albatross Tanker Corporation*, 367 F.2d 465, both the Jones Act and the Death on the High Seas Act can be applied to the same death. That an injured seaman is entitled to a remedy under both the doctrine of unseaworthiness and the Jones Act is "old hat" to say the least. Additionally, the allowance of both an action for damages and an action for maintenance and cure arising out of the same injury is universally recognized and unquestioned.

The men who work on the offshore oil platforms in the Outer Continental Shelf do so at great risk to their lives and incur the perils of the sea. Yet they

are denied a Jones Act remedy and the warranty of unseaworthiness. Inasmuch as there is a statute, the Outer Continental Shelf Lands Act, extending the law of the adjacent state to the artificial islands, why should these men be denied the supplemental remedy?

It is respectfully submitted that the Death on the High Seas Act does not provide the exclusive remedy for wrongful death occurring upon one of the artificial islands in the Outer Continental Shelf off the coast of Louisiana but rather that the Louisiana Death Act as extended by the Outer Continental Shelf Lands Act supplements it and provides additional remedies.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

.....,
A. DEUTSCHE O'NEAL,

.....,
PHILIP E. HENDERSON,

.....,
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.....
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.....
 ALFRED S. LANDRY,
 Of LANDRY, WATKINS, COUSIN &
 BONIN,
 211 East Main Street,
 New Iberia, Louisiana,
 Attorneys for Petitioner Ella
 Mae Dore.

CERTIFICATE.

This is to certify that I have this day mailed a copy of the above and foregoing Petition for a Writ of Certiorari to Mr. Richard C. Baldwin, Adams and Reese, 847 National Bank of Commerce Building, New Orleans, Louisiana; Mr. Thomas W. Thorne, Jr., Lemle, Kelleher, Kohlmeyer, Matthews & Schumacher, National Bank of Commerce Building, New Orleans, Louisiana; Mr. Lancelot P. Olinde, Humble Oil and Refining Company, P. O. Box 60626, New Orleans, Louisiana, H. Lee Leonard, Voorhies, Labbe, Fontenot, Leonard & McGlasson, Lafayette, Louisiana; and James E. Diaz, Davidson, Meaux, Onebane & Donohoe, 201 West Main Street, Lafayette, Louisiana.

August ..., 1968.

.....

APPENDIX A.**IN THE SUPREME COURT OF THE UNITED STATES****October Term, 1968.**

No.

**UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF LOUISIANA.****No. 3109 Civil Action.****PAULETTE BOUDREAUX RODRIGUE,**
Plaintiff,
versus**THE AETNA CASUALTY AND SURETY COMPANY and
HUMBLE OIL AND REFINING COMPANY,**
Defendants.**JUDGMENT.**

This cause came on for trial before the Court and a jury, Honorable E. Gordon West, District Judge, presiding, and the Court dismissed the action before trial assigning oral reasons therefor. Now,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of the remaining defendant, Humble Oil and Refining

Company, and against plaintiff, Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue and administratrix of the estate of her two minor children, Angela Rae Rodrigue, and Butley J. Rodrigue, Jr., dismissing plaintiff's suit at her cost.

Baton Rouge, Louisiana, October 21, 1966.

A. DALLAM O'BRIEN, JR.,
Clerk,

By /s/ C. H. BANTA,
Deputy Clerk,
/s/ E. G. W.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968.

No.

**UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF LOUISIANA.**

No. 3298 Civil Action.

PAULETTE BOUDREAUX RODRIGUE,
Plaintiff,

versus

**RUBIN W. MAYRONNE, JR., d/b/a MAYRONNE
DRILLING COMPANY,**
Defendant.

JUDGMENT.

This cause came on for trial before the Court and a jury, Honorable E. Gordon West, District Judge, presiding, and the Court dismissed the action before trial assigning oral reasons therefor. Now,

**IT IS THEREFORE ORDERED, ADJUDGED
AND DECREED** that judgment be entered in favor of the remaining defendants, Rubin W. Mayronne, Jr., d/b/a Mayronne Drilling Company, and Humble Oil and Refining Company, and against plaintiff,

Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue and tutrix of and administratrix of the estate of her minor children, Angela Rae Rodrigue and Butley J. Rodrigue, Jr., dismissing plaintiff's suit at her cost.

Baton Rouge, Louisiana, October 21, 1966.

A. DALLAM O'BRIEN, JR.,
Clerk,

By /s/ C. H. BANTA,
Deputy Clerk,
/s/ E. G. W.

Transcript of Ruling of the Court, dismissing Civil Actions 3109 and 3298, made in Open Court on September 21, 1966, at the United States Courthouse, Baton Rouge, Louisiana; the Honorable E. Gordon West, United States District Judge, presiding.

Appearances:

Messrs. O'Neal & Waitz, By: A. Deutsch O'Neal, Sr., Esq., and Philip E. Henderson, Esq., Houma, Louisiana, Attorneys for Plaintiffs.

Messrs. Lemle & Kelleher, By: Thomas W. Thorne, Jr., Esq., National Bank of Commerce Building, New Orleans, Louisiana, Attorneys for Employers National Insurance Company.

Alexander C. Cocke, Esq., P. O. Box 60626, New Orleans, Louisiana, Attorney for Humble Oil & Refining Company, Defendant.

Messrs. Adams & Reese, By: Richard C. Baldwin, Esq., National Bank of Commerce Building, New Orleans, Louisiana, Attorneys for Humble Oil & Refining Company and Mayronne Drilling Company, Defendants.

Reported by Felix L. Olivier, Official Court Reporter.

The Court:

During the recess, the Court took under advisement for reconsideration the motions which had previously been filed by the defendants in the civil suits and the respondents in the admiralty action to dismiss each of the three actions, the diversity action number 3109, the outer continental shelf action, number 3298, and the admiralty action, number 810.

Let the record further show that after hearing argument of counsel during the noon recess and after reconsidering all of the briefs that have previously been filed in this matter, together with a reconsideration of the law that I believe to be applicable to these motions, I will make the following rulings with the understanding that these rulings supersede and take the place of any contrary rulings that I might have previously made with regard to these or similar motions in these three cases.

First, with regard to Civil Action 3109, which is a case based not on the allegation of the applicability of the outer continental shelf act, but simply on diver-

sity of citizenship with more than ten thousand dollars involved, the Court is of the opinion that that suit should be dismissed on the ground that this accident, by agreement of counsel, as contained in the pre-trial order, occurred more than a marine league off the coast of Louisiana in the area known as the outer continental shelf. Thus, there is no jurisdiction in this Court over an action being as I say an action brought on a suit occurring outside of the State of Louisiana.

Insofar as Civil Action 3298 is concerned, this is an action brought specifically under the provisions of the outer continental shelf act. It is the defendant's contention in this suit that this matter is barred by prescription because of the fact that suit was filed more than one year, but less than two years, following the accident, and the defendant contends that if as declared in the outer continental shelf act the Law of Louisiana is extended to cover this situation, not only must the provisions of Article 2315 of the Civil Code providing for an action for wrongful death be extended, but also the one year prescriptive period must be extended and thus the case will be prescribed by one year. It is the defendant's further contention in support of the motion that the outer continental shelf act would only make state law applicable to this area to fill a void not provided for in federal law, and that if in fact federal law did grant to the plaintiffs a right of action for wrongful death, then they could not also have the advantage of the extension of state law under the outer continental shelf act. The

defendant further claims that if Article 2315 is extended under the provisions of the outer continental shelf act, that then of necessity, the Louisiana Workmen's Compensation law would be extended, thus limiting the right of plaintiff to sue in workmen's compensation because of the fact that he was performing part of the trade, business or occupation of the prime contractor.

The defendant further claims in connection with this suit that under the holding of *Pure Oil Company versus Snipes*, 293 Fed. (2) at page 60, that Article 2315 of the Louisiana Civil Code does not, in fact, cover this case, but that instead the Federal law must cover. Of course, needless to say, counsel for plaintiff disagrees with all of these contentions and argues, and cited his authorities therefor. It is the opinion of this Court that suit 3298 must also be dismissed and that this suit must proceed as a suit in admiralty under the "Death on the High Seas" statute.

In *Pure Oil versus Snipes*, in a very detailed opinion by Judge Brown of the Fifth Circuit Court of Appeals, it was specifically and categorically held that the one year prescriptive period of Article 2315 did not apply to an accident occurring on a fixed platform outside of the Continental Limits of the State of Louisiana, and that in fact Louisiana law did not apply, but that Federal Maritime law would apply. Rightly or wrongly, this is the specific holding in *Pure Oil versus Snipes*. It is the reasoning of the

Court in *Pure Oil versus Snipes*, referring particularly to the question of the applicability of the Workmen's Compensation Statute, that Congress did not intend to apply such laws to an accident happening on a fixed platform, and they referred specifically to the limitations placed upon an employe to sue his employer, and Judge Brown says, that in the opinion of that Court, Congress did not intend to place such varied restrictions on employes working in the outer continental shelf area as would be applied if the laws of all of the various states bordering on navigable waters were applied rather than the laws of Federal Maritime—provisions of Federal Maritime law.

You will recall that in that case, Judge Brown further pointed to the fact that the outer continental shelf act contemplated the Longshoremen and Harborworkers Act as the remedy for a person injured on a fixed platform located outside of the limits of the state, and he pointed to that along with other provisions of the act that indicated clearly the intent of Congress to apply not state law but Federal law and then more specifically the Federal Maritime law to accidents happening in this area.

So we come now to the question of Federal Maritime law. If we are to say as the *Snipes* case did say, that Louisiana law does not apply, then we must conclude that Article 2315 of the Louisiana Civil Code does not apply but that Federal Maritime law which does give a right of action for wrongful death must

apply. In other words, the void is not there by saying that 2315 does not apply. It does not create a void in which the plaintiff would find herself without a cause of action; on the contrary, to hold as I am holding would carry out specifically the mandate of the Snipes case and at the same time would not deprive the plaintiff of a right of action for wrongful death, because if we apply Maritime law as Judge Brown said in the Snipes case must be applied, then Death on the High Seas is the maritime law and the Death on the High Seas statute does provide for wrongful death and, consequently, both the intent of Congress and the interpretation at least in the Snipes case and the rights of the plaintiff are preserved and protected.

So I will dismiss, and grant the motion to dismiss 3298, which is the action based upon the outer continental shelf act against Rubin W. Mayronne, Jr., doing business as Mayronne Drilling Company, as the only defendant.

» This will leave the suit as one in admiralty to be tried without a jury to the Court alone with the defendants being Rubin W. Mayronne, Jr., doing business as Mayronne Drilling Company, and Humble Oil and Refining Company. I believe that is correct, is it not?

Mr. Baldwin:

Yes, sir.

The Court:

With that explanation, gentlemen, and after much, much thought and all the study that I know how to give to this very disturbing, and I might say mixed-up problem, that is the conclusion that I find that I must inevitably come to.

APPENDIX B.**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT****No. 24504****PAULETTE BOUDREAUX RODRIGUE, ETC.,
Appellant,
versus****AETNA CASUALTY AND SURETY COMPANY, ET AL.,
Appellees.****Appeal from the United States District Court for the
Eastern District of Louisiana.****(May 16, 1968.)****Before BELL, AINSWORTH and GODBOLD, Circuit
Judges.**

PER CURIAM: Appellant's husband was killed in an accident on the derrick of a drilling rig on a fixed structure located on the Outer Continental Shelf approximately 28 miles south of Grand Isle, Louisiana. The District Judge dismissed appellant's civil suits based upon Louisiana's Death Statute (La. R.C.C. Art. 2315) but retained jurisdiction over her suit in Admiralty under the Death on the High Seas Act (46 U.S.C. § 671, et seq.) and awarded a substantial judgment under that Act.

The contention that under Section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. § 1331), appellant may bring an action for damages under the Louisiana Death Statute (La. R.C.C. Art. 2315) has recently been decided by us adversely to the contentions of appellant. In *Dore, et al. v. Link Belt Co., et al.*, 5 Cir., 1968, F.2d [No. 24370 decided March 25, 1968], we held that the exclusive remedy under these circumstances is the Death on the High Seas Act. We are not persuaded that we should change our holding in *Dore*, which is supported by three recent decisions of this Court in *Loffland Brothers Company v. Roberts*, 5 Cir., 1967, 386 F. 2d 540, cert. denied, U. S., S. Ct. (1968); *Ocean Drilling & Exp. Co. v. Berry Bros. Oilfield Service*, 5 Cir., 1967, 377 F. 2d 511; and *Pure Oil Co. v. Snipes*, 5 Cir., 1961, 293 F. 2d 60.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

October Term, 1967.

No. 24504.

D. C. Docket Nos. CA 3109 & CA 3298.

**PAULETTE BOUDREAUX RODRIGUE, ETC.,
Appellant,**

versus

**AETNA CASUALTY AND SURETY COMPANY, ET AL.,
Appellees.**

**Appeal from the United States District Court for the
Eastern District of Louisiana.**

**Before BELL, AINSWORTH and GODBOLD, Circuit
Judges.**

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Paulette Boudreaux Rodrigue, Etc., be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

May 16, 1968.

Issued as Mandate: JUN 7 1968

21

APPENDIX C.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24370

ELLA MAE DUBOIS DORE, Individually and as Natural
Tutrix of and for and on behalf of her minor children,
RODNEY JAMES DORE, VICKIE ANN DORE and
JO ELLA DORE,

Appellants,

versus

THE LINK BELT COMPANY, ET AL.,
Appellees.

Appeal from the United States District Court for the
Western District of Louisiana.

(March 25, 1968.)

Before GEWIN, BELL and AINSWORTH, Circuit
Judges.

AINSWORTH, Circuit Judge: The issue with which
we are concerned is whether the Death on the High
Seas Act, 46 U.S.C. § 761, et seq.,¹ is the exclusive

¹ The pertinent provisions of the Death on the High Seas Act
follow:

46 U.S.C. § 761:

"Whenever the death of a person shall be caused by wrong-
ful act, neglect, or default occurring on the high seas beyond
a marine league from the shore of any State . . . the
personal representative of the decedent may maintain a suit

remedy of claimants in an action growing out of the death of an oil field worker which occurred on a stationary offshore drilling platform on the outer Continental Shelf of the Gulf of Mexico beyond a marine league from the Louisiana shore. Plaintiffs, who are the surviving wife and children of the deceased worker, contend that the Act, which provides for recovery only for the pecuniary loss sustained, should be supplemented by Louisiana statutory law which provides a broader remedy for damages.²

for damages in the district courts of the United States, in admiralty, . . ."

46 U.S.C. § 762:

"The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought"

46 U.S.C. § 763:

"Suit shall be begun within two years from the date of such wrongful act"

46 U.S.C. § 766:

"In suits under this chapter the fact that the decedent has been guilty of contributory negligence shall not bar recovery, but the court shall take into consideration the degree of negligence attributable to the decedent and reduce the recovery accordingly."

46 U.S.C. § 767:

"The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone."

² Louisiana statutory law on the subject is found in Louisiana Revised Civil Code Art. 2315, which provides in pertinent part as follows:

"Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."

"The right to recover damages to property caused by an offense or quasi offense is a property right which, on the death of the obligee, is inherited by his legal, instituted, or irregular heirs, subject to the community rights of the surviving spouse."

"The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor

Pursuant to motions to dismiss of defendants, The Link Belt Company and Road Equipment Company, the district court entered judgment against plaintiffs, limiting them to a claim in Admiralty for pecuniary loss under the Death on the High Seas Act.*

Plaintiffs appealed from the judgment and specify the following errors:

"The lower court erred in holding that the plaintiffs, Ella Mae Dubois Dore, individually and as natural tutrix of the minors, Rodney James, Vickie Ann and Jo Ella Dore, had no standing in court; and in holding that the exclusive remedy for the death of Joseph Dore was for 'pecuniary losses' only under the Death on the High Seas Act, 46 U.S.C.A., Section 761, et seq., in striking from the com-

of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such child or children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving; and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased. A right to recover damages under the provisions of this paragraph is a property right which, on the death of the survivor in whose favor the right of action survived, is inherited by his legal, instituted, or irregular heirs, whether suit has been instituted thereon by the survivor or not."

* After this case was appealed the district judge, with our approval, amended his judgment to certify the question as required by Rule 54(b), Federal Rules of Civil Procedure. See *Cold Metal Process Co. v. United Eng. & Fdry. Co.*, 351 U.S. 445, 76 S. Ct. 904 (1956), where a similar certification after appeal was approved by the Supreme Court.

plaint all items of damage other than 'pecuniary loss' and in directing that this case be removed to the Admiralty side of the Court and that plaintiffs would not have a right to trial by jury."

Decedent, Joseph Dore, an oil field worker, was killed while working on a stationary offshore drilling platform on the outer Continental Shelf in the Gulf of Mexico south of the State of Louisiana, approximately fifty miles seaward from Marsh Island, when a crane which he was operating and which it is alleged was "sold, manufactured, supplied and installed" by defendants, The Link Belt Company and Road Equipment Company, collapsed and fell more than sixty feet.⁴ The widow of decedent instituted a civil action on her behalf and that of the minor Dore children, alleging negligence by defendants⁵ under the General Maritime Laws, Death on the High Seas Act, 46 U.S.C. § 761, et seq., and Article 2315 of the Revised Civil Code of Louisiana, claiming damages for

⁴ By stipulation between the parties filed subsequent to the hearing and attached to the trial judge's certification under Rule 54(b), Federal Rules of Civil Procedure, it was agreed that the work was being performed on the "outer Continental Shelf" and that the accident occurred in the following manner:

"That the decedent was a crane operator working on a crane on a pedestal on a stationary platform; That the crane was being used to unload a barge or vessel located immediately next to the stationary platform; That while a load was being lifted from the vessel with an intention to place it on the stationary platform, the crane toppled over with the decedent in the crane and fell to the barge or vessel below, which was being unloaded and the decedent was killed when he fell on the barge."

⁵ There is a lack of complete diversity. Plaintiffs are citizens of Louisiana. Road Equipment Company is a Louisiana corporation. The Link Belt Company is a foreign corporation.

"loss of love and affection, loss of support and inheritance, loss of material aid and services, loss of parental guidance, loss of society and companionship, pain and suffering, anguish and shock."

Appellants contend that under the "savings-to-suitors" clause, 28 U.S.C. § 1333,⁶ and under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, et seq.,⁷ state remedies are available to them in addi-

⁶ 28 U.S.C. § 1333 provides in pertinent part:

"The district courts shall have original jurisdiction, exclusive of the courts of the States of:

"(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

⁷ The pertinent parts of the Act provide:

43 U.S.C. § 1332:

"(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

43 U.S.C. § 1333:

"(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State:

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States.

tion to the remedy provided by the Death on the High Seas Act, 46 U.S.C. § 761, et seq.

Under the Death on the High Seas Act, when wrongful death occurs beyond a marine league from the shore of any state, a remedy is provided in Admiralty in the United States courts. Under the Outer Continental Shelf Lands Act, the laws of the United States are extended to the subsoil, seabed, artificial islands and fixed structures on the outer Continental Shelf. Laws of adjacent states, to the extent that they are applicable and not inconsistent with the Outer Continental Shelf Act or other federal laws, are under that Act declared to be the law of the United States. The site of decedent's death, fifty miles south of Marsh Island, Louisiana, on the Shelf, is in an area encompassed by both the Death on the High Seas Act and the Outer Continental Shelf Lands Act.

Appellants contend that the language of the Outer Continental Shelf Lands Act which makes applicable the laws of the adjacent state under certain circumstances requires an interpretation that the law of Louisiana is applicable.

Necessarily, Louisiana law must not be inconsistent with federal law to warrant this interpretation. Several inconsistencies between federal law and the law of Louisiana are apparent; for example, the law of Louisiana, which provides *inter alia* for broad remedies for wrongful death, such as loss of love and affection, etc., limits the time to one year within which

an action may be brought and bars recovery because of contributory negligence. In contrast, the provisions of the Death on the High Seas Act provide for pecuniary loss only, a two-year period in which an action may be brought, and mere diminution of damages in the event of comparative negligence.

Determination of which law is to apply to cases involving death of a maritime worker on the outer Continental Shelf presents a question of first impression for this Court. In the present case the death occurred beyond a marine league from shore. We have had several occasions, however, to resolve disputes centered around the question of whether federal or state law is applicable to torts, in which a maritime worker suffered personal injuries, occurring on the outer Continental Shelf. We have uniformly held that federal law is the applicable law. *Loffland Brothers Company v. Roberts*, 5 Cir., 1967, 386 F. 2d 540, cert. denied U. S., S. Ct. (1968); *Ocean Drilling & Exp. Co. v. Berry Bros. Oilfield Service*, 5 Cir., 1967, 377 F. 2d 511; *Pure Oil Co v. Snipes*, 5 Cir., 1961, 293 F. 2d 60.⁸ In *Loffland*, the defendant urged that Louisiana law was applicable on the Continental Shelf, under which law recovery for physical injury would have been barred because of plaintiff's contributory negligence, as opposed to diminution of damages under the maritime concept of comparative negligence. In rejecting defendant's argument, we said (386 F. 2d at 545):

⁸ See also *Touchet v. Travelers Indemnity Company*, D. C., W. D. La., 1963, 221 F. Supp. 376.

"In *Pure Oil Co. v. Snipes*, 293 F. 2d 60 (5 Cir. 1961) this Court carefully reviewed the Outer Continental Shelf Lands Act and concluded that Congress deemed the hazards presented by the offshore drilling platforms to be maritime in nature. We therefore held that under the Act federal maritime law was to apply to torts occurring on these offshore platforms. That decision has been consistently followed by this Court."

In *Pure Oil* plaintiff fell through an open space in a platform located on the outer Continental Shelf into the ocean below and suffered severe injuries. Defendants argued that plaintiff's right to recover had prescribed under the one-year Louisiana statute. We disagreed and said that federal and not state law was pertinent. We said (293 F. 2d at 64):

"In every sense of the word this happened on the high seas. It did not happen in Louisiana. Nor did it happen in waters which Louisiana could regard as within her territorial boundaries. . . .

"We think that a consideration of both intrinsic and extrinsic factors requires the conclusion that it was the intention of Congress that (a) this occurrence be governed by Federal, not State, law, and (b) that the Federal law thereby promulgated would be the pervasive maritime law of the United

States. In connection with the latter phase—the choice by Congress of maritime law—it is again important to keep in mind that we are in an area in which Congress has an almost unlimited power to determine what standards shall comprise the Federal law.”

While it is true that *Loffland, Pure Oil Co.*, and *Ocean Drilling & Exp. Co.* relate to injuries sustained by workmen and not to their death, we do not regard this distinction as decisive. The rationale of these opinions is equally and logically applicable to torts which result in death of a worker.

Appellants’ further contention that their state remedies are preserved under the “savings-to-suitors” clause of 28 U.S.C. § 1333 is not tenable. We know of no theory in law under which a site in the Gulf of Mexico more than fifty miles from the shore of Louisiana can be considered as part of the State.⁹ The conclusion is clear that there is no remedy to save under 28 U.S.C. § 1333. Cf. *Jennings v. Goodyear Aircraft Corporation*, D.C., D. Del., 1964, 227 F. Supp. 246.

⁹ The site of the accident, approximately fifty miles seaward of Marsh Island and south of the State of Louisiana, cannot conceivably be considered within the boundary of the State of Louisiana, either under the three-mile limitation of the Submerged Lands Act, 43 U.S.C. § 1301, or by virtue of the pronouncement by the United States Supreme Court in *United States v. States of Louisiana, Etc.*, 363 U. S. 1, 80 S. Ct. 961 (1960), restricting Louisiana’s submerged lands rights to an area within three geographical miles from the coastline of that State (363 U. S. at 79), but leaving unsettled the location of that coastline (363 U. S. at 65, 79).

No right or remedy existed for the death on the high seas of a non-seaman maritime worker prior to the enactment of the Death on the High Seas Act. The maritime law provided no cause of action for wrongful death. *The Harrisburg*, 119 U. S. 199, 7 S. Ct. 140 (1886). When Congress had remained silent, state death statutes were recognized and enforced by Admiralty courts in claims arising from torts on the high seas. *The Hamilton*, 207 U. S. 398, 28 S. Ct. 133 (1907). With the passage of the Death on the High Seas Act, it is pertinent to inquire whether state statutes allowing for recovery for wrongful death are preempted by the Act. The issue is a novel one for this Court, and the United States Supreme Court has made no pronouncement in this regard.

The legislative history indicates that when Congress passed the Death on the High Seas Act it intended the remedy it provided to be an exclusive one. In *Higa v. Transocean Airlines*, 9 Cir., 1955, 230 F. 2d 780, 783, 784, the Court set forth the following colloquy which occurred during the debate in the House of Representatives:

“Mr. Igoe. Does not the gentleman think that he should inform the gentleman from Ohio (Mr. Ricketts) that this proceeding will be in admiralty and that there will be no jury, so that no Member of the House may have any misunderstanding about it? That question was thrashed out and it was decided best not to

incorporate into this bill a jury trial because of the difficulties in admiralty proceedings.' (Page 4482. Emphasis added.)

"'Mr. Moore of Virginia. * * * The purpose of this bill, as I understand it, is to give exclusive jurisdiction to the admiralty courts where the accident occurs on the high seas.

"'Mr. Volstead. That is it.' (Page 4483.) Congressional Record, Volume 59, Part V."

The Ninth Circuit concluded, "Construing the Act's words, if Higa's diversity proceeding at common law were permitted by the High Seas Act it would make superfluous its words 'in admiralty.'"¹⁰

Appellants call our attention to several federal district court decisions which give effect to state wrongful death statutes in addition to remedies under the Death on the High Seas Act.¹¹ However, there are other federal district courts whose holdings are to the contrary.¹² The two United States Supreme Court

¹⁰ Cf. *Middleton v. Luckenbach S. S. Co.*, 2 Cir., 1934, 70 F. 2d 326.

¹¹ *Safir v. Compagnie Generale Transatlantique*, D. C., E. D. N. Y., 1965, 241 F. Supp. 501; *Cunningham v. Bethlehem Steel Co.*, D. C., S. D. N. Y., 1964, 231 F. Supp. 934; *Abbott v. United States*, D. C., S. D. N. Y., 1962, 207 F. Supp. 468; *Williams v. Moran, Proctor, Mueser & Rutledge*, D. C., S. D. N. Y., 1962, 205 F. Supp. 208.

¹² For holdings contrary to the above cited cases, see *Montgomery v. Goodyear Tire & Rubber Company*, D. C., S. D. N. Y., 1964, 231 F. Supp. 447; *Jennings v. Goodyear Aircraft Corporation*, D. C., Del., 1964, 227 F. Supp. 246; *Devlin v. Flying Tiger Lines, Inc.*, D. C., S. D. N. Y., 1963, 220 F. Supp. 924; *Wilson v. Transocean Airlines*, D. C., N. D. Calif., 1954, 121 F. Supp. 85; *Blumenthal*

cases cited by appellants, *Just v. Chambers*, 312 U. S. 383, 61 S. Ct. 687 (1941) and *Kernan v. American Dredging Company*, 335 U. S. 426, 78 S. Ct. 394 (1958), are inapposite to the present case. Both cases are concerned with torts occurring within state territorial waters, not on the high seas. In *Just v. Chambers*, *supra*, a yacht owner who subsequently died attempting to limit his liability in claims for injuries sustained by passengers as a result of his alleged negligence on navigable waters within the territorial limits of the State of Florida. In reversing the Fifth Circuit and affirming the district court's finding that under a statute of Florida the claimants' causes of action survived the owner's death, the Supreme Court recognized the "authority of the States to create rights and liabilities with respect to conduct within their borders, when the state action does not run counter to federal laws or the essential features of an exclusive federal jurisdiction." The Court held that it saw "no reason why, under this test, the Florida rule in providing for the survival of a cause of action against a deceased tortfeasor for injuries occurring on navigable waters within the limits of the State should not be applied." (312 U. S. at 391.) *Kernan v. American Dredging Company*, *supra*, is a limitation proceeding in which a claim for damages was filed as the result of the death of a seaman who lost his life on a tug in the Schuylkill River in Philadelphia. Apparently the language to which appellants refer is that contained at page 430

v. United States, D. C., E. D. Pa., 1960, 189 F. Supp. 439;
Echavarria v. Atlantic & Caribbean Steam Nav. Co., D. C., E. D. N. Y., 1935, 10 F. Supp. 677.

in footnote 4, where the Supreme Court in dictum says, "Presumably any claims, based on unseaworthiness, for damages accrued prior to the decedent's death would survive, at least if a pertinent state statute is effective to bring about a survival of the seaman's right." That a state death statute will be enforced in Admiralty where death occurs as the result of tortious conduct occurring upon navigable waters of a state within that state's boundaries is of course a basic principle recognized in the savings clause of 28 U.S.C. § 1333, and the uniformity of maritime law is not offended by such enforcement. See *The M/V "Tungus" v. Skovgaard*, 358 U. S. 588, 79 S. Ct. 508 (1959). However, this is not to say that such a state statute would be effective where death occurs not on the territorial waters of a state, not within a marine league from its shores, but more than fifty miles seaward of the shores of that state.

We hold, therefore, that the Death on the High Seas Act provides the exclusive remedy in this case.¹³

AFFIRMED.

¹³ Because of our holding we need not consider appellants' further contentions, not strenuously urged, that other remedies such as the law of the domicile of defendants might be applicable, or that because the action includes a claim for breach of implied warranty state law should apply as no such remedy exists under the Death on the High Seas Act.

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

October Term, 1967.

No. 24370.

D. C. Docket No. CA 11662.

**ELLA MAE DUBOIS DORE, Individually and as Natural
Tutrix of and for and on behalf of her minor children,
RODNEY JAMES DORE, VICKIE ANN DORE and
JO ELLA DORE,**

Appellants,

versus

**THE LINK BELT COMPANY, ET AL.,
Appellees.**

**Appeal from the United States District Court for the
Western District of Louisiana.**

Before GEWIN, BELL and AINSWORTH, Circuit Judges.

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judg-

ment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Ella Mae Dubois Dore, Individually and as Natural Tutrix of and for and on behalf of her minor children, Rodney James Dore, Vickie Ann Dore and Jo Ella Dore, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

March 25, 1968

Issued as Mandate: May 23, 1968

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 24370.

**ELLA MAE DUBOIS DORE, Individually and as Natural
Tutrix of and for and on behalf of her minor children,
RODNEY JAMES DORE, WICKIE ANN DORE and
JO ELLA DORE,**

Appellants,

versus

**THE LINK BELT COMPANY, ET AL.,
Appellees.**

**Appeal from the United States District Court for the
Western District of Louisiana.**

(May 15, 1968.)

PETITION FOR REHEARING.

Before GEWIN, BELL and AINSWORTH, Circuit Judges.

PER CURIAM:

**IT IS ORDERED that appellants' petition for re-
hearing in this cause be, and the same is hereby,
DENIED.**





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Supreme Court of the United States

OCTOBER TERM, 1968

No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL.,

and

ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,

Petitioners,

versus

AETNA CASUALTY AND SURETY COMPANY, ET AL.,

and

THE LINK BELT COMPANY, ET AL.,

Respondents.

**BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF
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INDEX

	Page
QUESTION PRESENTED	1
REASONS FOR DENYING PETITION	1
STATEMENT OF CASE	2
ARGUMENT	6
CONCLUSION	12
CERTIFICATE	14

AUTHORITIES

Cases

Blumenthal V. United States, 189 F. Supp. 445, (E.D. Penn., 1960) Affirmed 306 F. 2d 16	9
Canillas V. Joseph H. Carter, Inc., 280 F. Supp. 48, (S.D. N.Y., 1968)	10
Cunningham V. Bethlehem Steel Co., 231 F. Supp. 934 (S.D. N.Y., 1964)	10
D'Aleman V. Pan American World Airways, 259 F. 2d 493, (2d Cir., 1958)	9
Develin V. Flying Tiger Lines, Inc., 220 F. Supp. 924 (S.D. N.Y., 1963)	12
First National Bank in Greenwich V. National Airlines, Inc., 171 F. Supp. 528, (S.D. N.Y., 1958), cert. den. 368 U.S. 859, 82 S. Ct. 102, 7 L. Ed. 2d 57, Affirmed 288 F. 2d 621	9
Guess V. Read, 290 F. 2d 622, (5th Cir., 1961)	2
Higa V. Transocean Airlines, 230 F. 2d 780, (9th Cir., 1955)	10

II

AUTHORITIES (Continued)

	Page
Ingneri V. CIE de Transports Oceaniques, 232 F.	
2d 257, (2nd Cir., 1963)	9
Jennings V. Goodyear Aircraft Corporation, 227	
F. Supp. 246 (Del., 1964)	9
King V. Pan American World Airways, 166 F.	
Supp. 136 Affirmed 270 F. 2d 355, cert. den.	
362 U.S. 928, 4 L. Ed. S. 746	10
Lindgren V. United States, 1930, 281 U. S. 38, 74	
L. Ed. 686, 50 S. Ct. 207	7
Middleton V. Luckenbach S.S. Co., Inc., 70 F. 2d	
326 (2nd Cir. 1934)	9
Noel V. United Aircraft, 204 F. Supp. 929 (Del.,	
1962)	9
Peterson V. United New York Sandyhook Pilots	
Assn., 17 F. Supp. 676, (E.D. N.Y., 1936)	9
Pure Oil V. Snipes, 293 F. 2d 60, (5th Cir., 1961)	3
United States V. Gavagan, 280 F. 2d 319, (5th Cir.,	
1960)	10
Western Fuel Co. V. Garcia, 1921, 257 U.S. 233, 66	
L. Ed. 210, 42 S. Ct. 89	7
Williams V. Moran, Procter, Mueser, and Rut-	
ledge, 205 F. Supp. 288 (S.D. N.Y., 1962)	9
Wilson V. Transocean Airlines, 121 F. Supp. 85	
(N. D. Calif., 1954)	8

III
AUTHORITIES (Continued)

Page

TREATISES

Baer, The Admiralty Law of the Supreme Court, 1963 Ed., at P. 99-100	11
Gilmore and Black, The Law of Admiralty, 1957 Ed. p. 308	10
Hughes, Death Actions in Admiralty, 31 Yale Law Journal 115 (1921)	11
Magruder and Grout, Wrongful Death with the Admiralty Jurisdiction, 35 Yale Law Journal '395 (1926)	11
Robinson, Handbook of Admiralty Law in the United States (1939) p. 140	11

STATUTES

Death on the High Seas Act, 46 U. S. C. A. Sec. 761-763	5
Louisiana Death Statute, C. C. 2315	7

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 436

**PAULETTE BOUDREAUX RODRIGUE, ET AL.,
and
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,**
Petitioners,

,versus

**AETNA CASUALTY AND SURETY COMPANY,
ET AL.,**

and

THE LINK BELT COMPANY, ET AL.,
Respondents.

**BRIEF IN OPPOSITION TO PETITION FOR A WRIT
OF CERTIORARI**

QUESTION INVOLVED

Does the Death on the High Seas Act provide the exclusive remedy for a death that occurs more than "a marine league from shore" of a state?

REASONS FOR DENYING PETITION

The Fifth Circuit in the instant cases followed the Congressional intent and the decisional law emanating from the Death on the High Seas Act when it held

the Death on the High Seas Act to be the exclusive remedy for a death which occurs beyond a marine league from a shore of a state.

STATEMENT OF CASE

THE RODRIGUE CASE:

The facts of this case are that three separate lawsuits were filed by the plaintiff against several defendants for the death of Mrs. Rodrigue's husband, which occurred 28 miles off the coast of Grand Isle, Louisiana. These cases were later consolidated. Prior to the trial on the merits in these cases, Aetna Casualty & Surety Co., insurer of Mayronne Drilling, brought a motion to be dismissed from Civil Action 3109, founded upon the assertion that it could not be properly made a party defendant under the Louisiana Direct Action Statute LSA-RS 22:655, because the death did not occur within the boundaries of the State of Louisiana. The case of *Guess Vs. Reed*, 290 F. 2d 622, (5th Cir., 1961) was cited in support of this contention. Judge West without written reasons dismissed Aetna Casualty & Surety Co. from Civil Action 3209, apparently, on the grounds that since the accident had occurred 28 miles off the coast of the State of Louisiana, the death did not occur within the State of Louisiana, and therefore the Louisiana Direct Action could not be applied to obtain jurisdiction over Aetna Casualty & Surety.

Just prior to the trial on the merits of these three consolidated cases, the defendants reurged several

motions to dismiss, founded on various grounds. After hearing oral argument on all of the motions, the trial judge denied the motion of all the defendants to dismiss admiralty action #810, the Death on the High Seas claim, and granted the defendant's motion dismissing civil actions 3109 and 3298.

The trial court in dismissing civil action #3109 stated at Page 143-44 of the trial transcript that since the death occurred more than a marine league from shore, the court did not have jurisdiction over the action.

In dismissing civil action #3298, the Honorable Gordon E. West referred extensively to the opinion of Judge Brown in *Pure Oil Vs. Snipes*, 293 F. 2d 60, (5th Cir., 1961) and stated:

"If we are to say as this *Snipes Case* did say, that Louisiana Law does not apply, then we must conclude that Article 2315 of the Louisiana Civil Code does not apply but that federal maritime law which does give a right of action for wrongful death must apply. In other words, the void is not there by saying that 2315 does not apply. It does not create a void in which the plaintiff would find herself without a cause of action; on the contrary, to hold as I am holding would carry out specifically the mandate of the *Snipes Case* and at the same time would not deprive the plaintiff of a right of action for wrongful death, because if we apply maritime law as Judge Brown said

in the Snipes Case must be applied, then death on the high seas is the maritime law and that death on the high seas statute does provide for wrongful death and consequently, both the intent of Congress and the interpretation at least in the Snipes Case and the rights of the plaintiff are preserved and protected."

After dismissal of the two civil actions, the trial court proceeded to hear the remaining admiralty action #810 and found the defendant Mayronne liable and awarded a judgment to the plaintiff in the amount of \$75,000.00 together with interest and costs of \$13,750.00 which totaled some \$88,750.00.

The Fifth Circuit on appeal of the Rodrigue Case held that the Death on the High Seas Act was the exclusive remedy for this death that occurred beyond a marine league from the shore of the State of Louisiana. See Rodrigue Vs. Aetna Casualty and Surety Co., 395 F.2d 216, (5th Cir., 1968).

THE DORE CASE:

The wife and children of Joseph Dore deceased, instituted a Civil Action in the United States District Court, Western District of Louisiana, Lafayette Division, against the Link Belt Company, a foreign corporation authorized to do and doing business in the State of Louisiana, and against the Road Equipment Company, Inc. which was brought in by a supplemental petition and which is a Louisiana corporation.

The plaintiffs in Article 6 of the petition alleged that Mr. Dore was killed while working on an off-shore drilling rig on South Marsh Island Block 51 in the Gulf of Mexico, which Block is approximately fifty miles south of Marsh Island, when a crane, "sold, manufactured; supplied and installed by The Link Belt Company . . . collapsed and fell a distance of more than sixty feet." It is alleged in Article 11 that petitioners bring the action under "the General Maritime Laws, the Death on the High Seas Act, 46 U.S.C.A. 761, et seq., Article 2315 of the Revised Civil Code of the State of Louisiana and under the other laws of the United States and the State of Louisiana." It is alleged in Article 12 that complainants suffered pecuniary losses, expenses and damages, including "loss of love and affection, loss of support and inheritance, loss of material aid and services, loss of parental guidance, loss of society and companionship, pain and suffering, anguish and shock totalling \$670,000.00."

Defendants, The Link Belt Company and the Road Equipment Company, filed motions to dismiss for failure of the petition to state a claim on which relief could be granted and alternatively, motions for summary judgment on the principal premise that the Death on the High Seas Act, Title 46 of the United States Code Annotated, Section 761, et seq., was the exclusive remedy, if any, in the wrongful death action sought to be recognized and enforced by petitioners and, accordingly, the provisions of this Act had to be met.

The Honorable Judge Richard J. Putnam, ruled on October 26, 1966, that the Death on the High Seas Act

was the only law applicable under the allegations of the petition and, accordingly, (1) the suit was removed to the admiralty side of court, (2) the administratrix of the estate of Joseph Dore for her and the minors' benefit, was the proper party plaintiff, and (3) the plaintiffs' recovery was restricted to pecuniary loss.

The Fifth Circuit on Appeal, *Dore V. Link Belt Co.*, 391 F. 2d 671 (5th Cir., 1968) affirmed the trial court's holding, stating at page 675:

"The legislative history indicates that when Congress passed the Death on the High Seas Act it intended the remedy it provided to be an exclusive one."

ARGUMENT

DEATH ON THE HIGH SEAS ACT IS THE EXCLUSIVE REMEDY FOR DEATHS OCCURRING MORE THAN A "MARINE LEAGUE FROM THE SHORE OF ANY STATE."

These petitions depend upon the construction and the affect to be given to sections 761-768 of Title 46 USCA, which provide a remedy for a death of a person caused by a wrongful act occurring on the "*High Seas beyond a marine league from the shore of any state.*" The recovery allowed under this act is provided for in Section 762, which states that recovery shall be "a fair and just compensation for the pecuniary loss. * * *"

The enactment of the Death on High Seas Act gave to the deceased seaman's representative a new substantive right which could be asserted in the admiralty field.

The petitioners urge that the right of action given under the provisions of the Death on the High Seas Act, is not exclusive, and that it does not supersede the right of action given by the death statute of the State of Louisiana, Article 2315, nor precludes their right to recover for the loss of love, companionship, society, and affection under the Louisiana Death Statute, when a death occurs more than a marine league from State's boundaries.

Prior to the adoption of the Death on the High Seas Act in 1920, the courts had held, that where a person's death resulted from a maritime tort on navigable waters within a state, whose statutes gave a right of action on account of death by wrongful act, the admiralty courts would entertain an action. *The Harrisburg*, 1886, 119 U. S. 199, 70 S. Ct. 140, 30 L. Ed. 358; *Western Fuel Company vs. Garcia*, 1921, 257 U. S. 233, 66 L. Ed. 210, 42 S. Ct. 89. These state wrongful death actions were allowed to be applied in the admiralty courts because Congress had not yet acted upon a uniform remedy for these deaths. The Supreme Court of the United States pointed this fact out in *Lindgren Vs. United States*, 1930, 281 U. S. 38, 74 L. Ed. 686, 50 Supreme Court 207, when it stated

"These statutes 'were not a part of the general maritime law' and were recognized only

because congress had not legislated on the subject."

It is clear that the enactment of the death on the high seas act was an act on the part of Congress in order to bring uniformity in the maritime field in regards to death more than a marine league from State boundaries, and necessarily superseded the application of the death statutes of the several states which then provided various remedies for such wrongful deaths.

In *Wilson v. Transocean Airlines*, 121 F. Supp. 85 (N. D. Calif., 1954) Judge Goodman, in a lengthy discussion of the exact question presented to this court stated at Page 90 that:

"The death on the high seas act was prompted, in large part, by the desire to put an end to the uncertainty attending the application of state statutes to deaths on the high seas. Many of these uncertainties would remain to plague both courts and litigants if the state statutes could still be availed of by suitors. In addition, since the death on the high seas act was drawn with the purpose to afford an exclusive, uniform federal right of action for death on the high seas, the right of action which it created is not appropriate to serve as a mere supplement to state-created rights of action on the high seas.

"Moreover, any attempt to apply a state wrongful death statute to a death occurring

on the high seas, would, today, raise a serious constitutional question. For decisions of the Supreme Court subsequent to its decision in the *Hamilton*, *Supra*, in 1907, have cast doubt on the continued vitality of the holding in that case that a state has power to create a right of action for death on the high seas."

In *Jennings Vs. Goodyear Aircraft Corporation*, 227 F. Supp. 246, (Del. 1964) The Court held that:

"The *Hamilton* is representative of the legal chaos existing prior to the passage of the act. Application of a state wrongful death act to deaths occurring on the high seas would defeat the very uniformity which congress sought to promote and would today raise serious constitutional issues."

See also the cases of *Igneri Vs. CIE de Transports Oceaniques*, 323 Fed. 2d 257, (2nd Cir., 1963); *Peterson Vs. United New York Sandyhook Pilots Ass'n*, 17 F. Supp. 676, (E. D. Ny., 1936); *First National Bank in Greenwich Vs. National Airlines, Inc.*, 171 F. Supp. 528, (S.D. Ny., 1958), Cert. den. 368 U.S. 859, 82 S.Ct. 102, 7 L. Ed. 2d 57, Affirmed, 288 Fed 2d, 621; *Blumenthal Vs. United States*, 189 F. Supp. 445, (E. D. Penn., 1960) Affirmed 306 F. 2d 16; *Middleton Vs. Luckenbach S. S. Co., Inc.*, 70 F. 2d 326 (2nd Cir., 1934); *Williams Vs. Moran, Procter, Mueser and Rutledge*, 205 F. Supp. 208 (S.D. Ny., 1962); *Noel Vs. United Aircraft*, 204 F. Supp. 929, (Del., 1962); *D'aleman Vs. Pan American World Airways*, 259 F. 2d 493 (2nd Cir., 1958), concurring

opinion of Judge Waterman, Page 496; Cunningham Vs. Bethlehem Steel Co., 231 F. Supp. 934 (S. D. Ny., 1964); United States Vs. Gavagan, 280 F. 2d 319, (5th Cir., 1960); King Vs. Pan American World Airways, 166 F. Supp. 136, Affirmed 270 F. 2d 355, Cert. den. 362 U. S. 928, 4 L. Ed. S. 746; Canillas Vs. Joseph H. Carter, Inc., 280 F. Supp. 934 (S. D. Ny., 1968) and Higa Vs. Trans-ocean Airlines, 230 F. 2d 780, (9th Cir., 1955).

We feel that these decisions are in accordance with the long settled rule that once congress has acted in the field, all state laws are superseded. See Lindgren Vs. United States, *supra*, not only have the majority of the courts held that a death which occurs more than a marine league from a state is *exclusively* under the Federal death on the high seas act, but so also have the majority of the legal writers in the martime field. In Gilmore and Black, The Law of Admiralty, 1957 Ed., at Page 308, the authors in discussing recovery for death, state:

"The high seas act provides only for recovery for death caused by wrongful act, neglect or default by way of a suit for damages in admiralty for the exclusive benefit of the listed beneficiaries; it further specifies that the recovery in such suits shall be a fair and just compensation for the pecuniary loss suffered by the persons for whose benefit this suit is brought. The high seas act and the Jones Act, incorporating FELA, were passed almost at the same time; it is a reasonable assumption that the failure of congress to provide specifically in the High Seas Act for the double

recovery must have been deliberate and that only pecuniary loss to the beneficiaries was meant to be recoverable." (Emphasis added)

In the work by Mr. Baer, *The Admiralty Law of the Supreme Court*, 1963 Ed., at Page 99-100 we find the following discussion in regard to the exclusiveness of the death on the high seas act.

"But, with the passage of the death of the high seas act, the state wrongful death acts were inoperative as to the deaths caused on the high seas *beyond a marine league from the shore of any state.*" (Emphasis added)

See also Hughes, *Death Actions in Admiralty*, 31 Yale Law Journal, 115 (1921); Magruder and Grout, *Wrongful Death within the Admiralty Jurisdiction*, 35 Yale Law Journal 395, 422-3 (1926); *Handbook of Admiralty Law in the United States*; Robinson (1939) P. 140.

An examination of the congressional history of the death on the high seas act further does not support the contention that the state death actions were intended to supplement the death on the high seas act for maritime deaths more than a marine league from the state. In *Wilson Vs. Transocean Airlines*, supra, the court dealt extensively with the legislative history of this act. At Page 89 of this decision, the court stated that it was clear from the language of the bill and from the reports of both houses of congress "that it was intended that the federal rights of action be exclusive for deaths upon the high seas and that the state wrong-

ful deaths act should supply the right of action for deaths upon state territorial waters." See also *Develin Vs. Flying Tiger Lines, Inc.*, 220 F. Supp. 924 (S. D. NY. 1963); Hughes, *Death Actions in Admiralty*, supra, p. 118; Magruder and Grout, *Wrongful Death Within the Admiralty Jurisdiction*, supra, p. 422-3.

In light of the foregoing decisions, legislative history, and treatises and in accordance with the principles therein stated it seems inescapable that The Death on The High Seas Act adopted in 1920 preempted the field in regard to deaths occurring more than a marine league from state boundaries.

In the case before your honors, it is uncontraverted that the deaths occurred 28 and 50 miles off the coast of the State of Louisiana. These distances are of course well in excess of the statutory marine league, thus permitting only application of the Federal Act.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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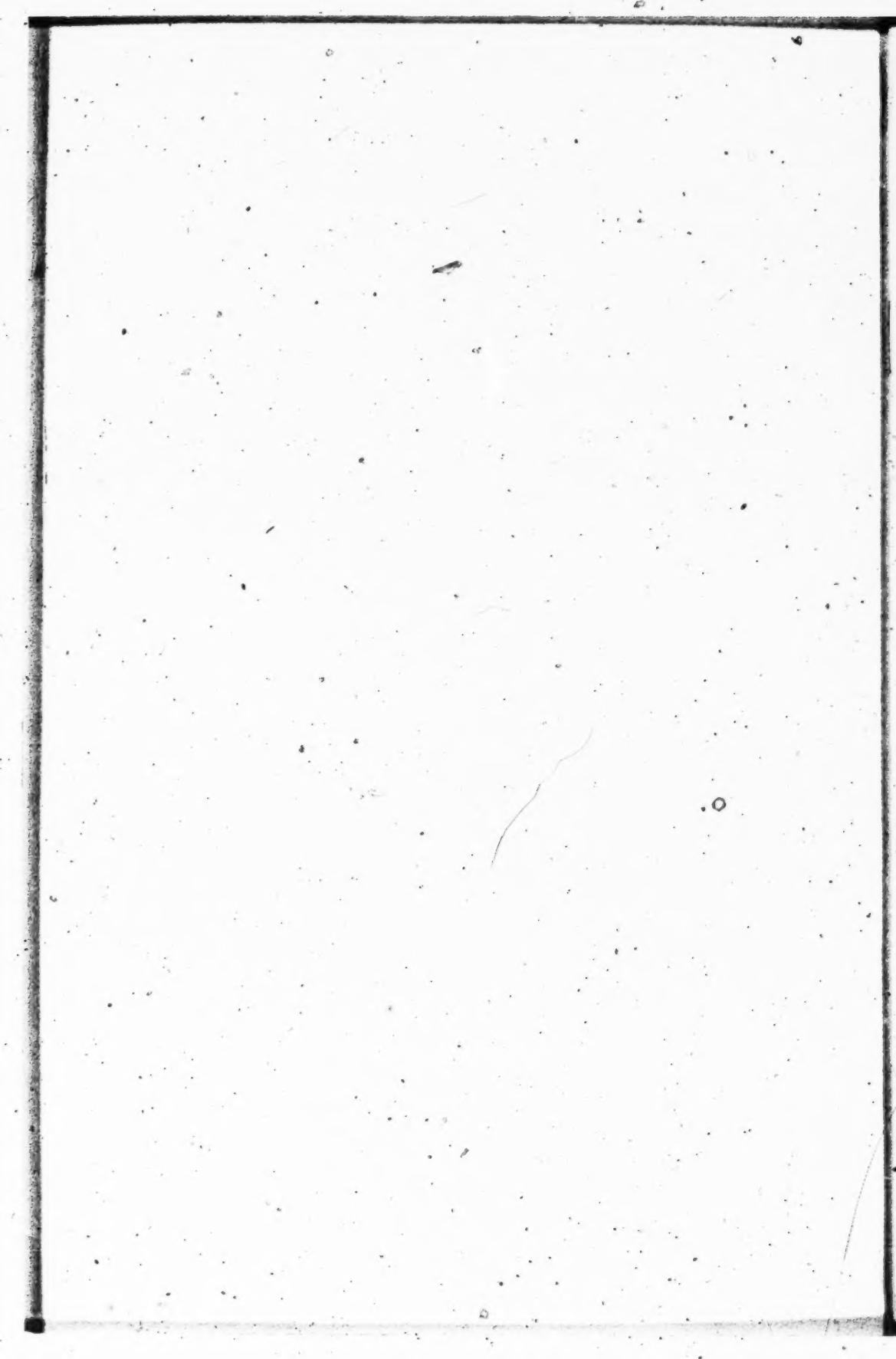
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CERTIFICATE

This is to certify that I have this day mailed a copy of the above and foregoing Brief in Opposition to Petition for a Writ of Certiorari to Mr. A. Deutsche O'Neal, Mr. Philip E. Henderson, Mr. Charles J. Hanemann, Jr., P. O. Box 590, O'Neal Building, Houma, Louisiana; Mr. George Arceneaux, Jr., 311 Goode Street, Houma, Louisiana; and Mr. Alfred S. Landry, Landry, Watkins, Cousin & Bonin, 211 East Main Street, New Iberia, Louisiana.

September _____, 1968





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Supreme Court of the United States

October Term, 1968.

No. 436

**PAULETTE BOUDREAUX RODRIGUE, ET AL.,
and
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,**
Petitioners,

versus

**AETNA CASUALTY AND SURETY COMPANY, ET AL.,
and
THE LINK BELT COMPANY, ET AL.,**
Respondents.

**ORIGINAL BRIEF ON BEHALF OF PETITIONERS,
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INDEX.

	Page
REFERENCE TO REPORTS OF OPINIONS IN THE COURTS BELOW	2
JURISDICTION	2
STATUTES INVOLVED	2
THE QUESTIONS PRESENTED FOR REVIEW ..	5
STATEMENT OF THE CASE	6
The Rodrigue Case	6
The Dore Case	9
ARGUMENT	11
The DOHSA Specifically Provides That It Does Not Affect State Remedies	13
The Legislative History Of The Death On The High Seas Act Shows That It Is Not An Exclusive Remedy And That On The Con- trary, State Remedies For Death On The High Seas Were Specifically Reserved ..	16
The Jurisprudence Clearly Shows That The Death On The High Seas Act Is Not An Exclusive Remedy And That State Statutes And Other Federal Statutes Properly Sup- plement It And Grant Collateral Or Addi- tional Remedies	22
There Is Nothing Unusual In Allowing Cumula- tive Remedies For The Same Incident	29
CONCLUSION	30
CERTIFICATE OF SERVICE	33

II

TABLE OF AUTHORITIES.

Cases:	Page
Abbott v. U. S., 207 F. Supp. 468 (S.D.N.Y., 1962), 1962 A.M.C. 2350	24
Byrd v. Napoleon Avenue Ferry, 152 F. Supp. 573 (E.D. La. 1954) (5th Cir. 1954)	27
Doyle v. Albatross Tanker Corporation, 367 F.2d 465, 1967 A.M.C. 201	22, 29
Gillespie v. U. S. Steel Corporation, 379 U.S. 148 (1964)	22
The Hamilton (Old Dominion Steamship Com- pany vs. Gilmore), 207 U.S. 398, 28 S. Ct. 133 (1907)	14, 19
Hess v. U. S., 361 U.S. 314, 1960 A.M.C. 527	27
Higa v. Transocean Airlines, 230 F.2d 780 (1956), cert. den. 352 U.S. 802	10, 11, 20, 24
Ignier v. Cie de Transports, 323 F.2d 257; cert. den. 376 U.S. 949	11
International Nav. Co. vs. Lindstrum, 123 F. 475 (2nd Cir. 1903)	4
Just v. Chambers, 312 U.S. 383, 61, 687, 1941 A.M.C. 430	27
Lindgren v. U. S., 281 U.S. 38 (1930)	22
McLaughlin v. Blidberg Rothschild Co., 156 F. Supp. 379 (S.D.N.Y. 1957)	25
Michel v. Bahn, 207 So.2d 150 (La. App. 4th Cir. 1968)	31
Movable Offshore Company v. Ousley, 346 F.2d 870, 5 Cir. 1965	30
Parker v. Smith, 147 So.2d 407 (La. App. 1963)	11
Romero v. International Terminal Operating Co., 358 U.S. 354, 1958 A.M.C. 832	26
Silverman v. Travelers, 277 F.2d 257 (5th Cir. 1960)	11

III

TABLE OF AUTHORITIES—(Continued):

	Page
Cases—(Continued):	
Southern Pac. Co. vs. De Valle Da Costa, 190 F. 689 (1st Cir. 1911)	14
Taylor v. Fishing Tools, Inc., 274 F. Supp. 666 (E.D. La. 1967)	31
Tungus v. Skovgaard, 358 U.S. 588, 1959 A.M.C. 813	27
United Pilots Association v. Helecki, 358 U.S. 613, 1959 A.M.C. 588	27
Ward, E. B., Jr., The, 17 Fed. 456 ..	14, 15, 19, 20, 24
Webb v. Zurich Ins. Co., 205 So.2d 398 (La. 1967) ..	31
Statutes:	
Death on the High Seas Act, 46 U.S.C. 761-768	2, 7, 9, 10, 11, 14, 16
Outer Continental Shelf Lands Act, 43 U.S.C. 1333	4, 7, 12
Louisiana Death Act, La. Civ. Code, Art. 2315..	5, 7
Louisiana Direct Action Statute, La. R.S. 22:655.	7, 31

Supreme Court of the United States

October Term, 1968.

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ORIGINAL BRIEF ON BEHALF OF PETITIONERS,
PAULETTE BOUDREAUX RODRIGUE, ET AL.,
AND ELLA MAE DUBOIS DORE, INDIVIDUALLY,
ETC.

MAY IT PLEASE THE COURT:

This brief is filed jointly by both petitioners in the captioned case. In the court below, the United States Court of Appeals for the Fifth Circuit, there were two separate cases (Paulette Boudreaux Rodrigue, et al. against Aetna Casualty and Surety Company, et al., and Ella Mae Dubois Dore, Individually, etc. against The Link Belt Company, et al.). Each case presented the same issue. Accordingly petitioners filed, as authorized by Supreme Court rule 23 (5), a joint petition for and were granted certiorari.

REFERENCE TO REPORTS OF OPINIONS IN THE COURT BELOW.

The opinion of the United States Court of Appeals for the Fifth Circuit in the *Rodrigue* case is officially reported at 395 F.2d 216. The opinion of the District Court in the *Rodrigue* case is not reported.

The opinion of the United States Court of Appeals for the Fifth Circuit in the *Dore* case is officially reported at 391 F.2d 671. The opinion of the District Court in the *Dore* case is not reported.

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1). The judgment of the Court of Appeals in the *Rodrigue* case was made and entered on May 16, 1968. The judgment of the Court of Appeals in the *Dore* case was made and entered on March 25, 1968, rehearing denied on May 15, 1968. On August 13, 1968, application for an extension of time for filing the joint petition for certiorari was made and it was granted with an order of this court extending the time for filing through August 23, 1968, on which day the petition was filed.

STATUTES INVOLVED.

Pertinent portions of the Statutes involved are:

1. The Death on the High Seas Act, 46 U.S.C. 761-768

"Section 1 (46 U.S.C. 761) Right of action; where and by whom brought

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person or corporation which would have been liable if death had not ensued.

Section 2 (46 U.S.C. 762) Amount and apportionment of recovery

The recovery in such suit shall be a fair and just compensation for the *pecuniary* loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

Section 4 (46 U.S.C. 764) Rights of action given by laws of foreign countries

Whenever a right of action is granted by the law of any foreign State on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained

in an appropriate action in admiralty in the courts of the United States without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding.

Section 7 (46 U.S.C. 767) Exceptions from operation of chapter

The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone." (Emphasis added.)

2. The Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq.

"§ 1331(a)(2):

To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the Outer Continental Shelf and artificial islands and fixed structures thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margins of the Outer Continental Shelf * * *." (Emphasis added.)

3. The Louisiana Death Act, Louisiana Civil Code,
Article 2315

"The right to recover damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such child or children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving; and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased."

THE QUESTIONS PRESENTED FOR REVIEW.

Whether the Death on the High Seas Act is the exclusive remedy for death on an artificial island in the Outer Continental Shelf, or, on the other hand, whether the Death on the High Seas Act can be supplemented by the law of the adjacent state which is expressly extended to the artificial islands by the Outer Continental Shelf Lands Act?

Phrased differently, the issue can be stated: Whether an action can be maintained for the nonpecuniary losses, e.g. loss of love and affection resulting from death on an artificial island in the Outer Continental

Shelf, in addition to pecuniary losses recoverable under the Death on the High Seas Act, when those losses are recoverable under the law of the adjacent state which is extended to the artificial islands by the Outer Continental Shelf Lands Act but are not recoverable under the Death on the High Seas Act?

STATEMENT OF THE CASE.

The Rodrigue Case

For the death of Butley J. Rodrigue which occurred on March 7, 1964, his widow and two children brought three suits in the United States District Court for the Eastern District of Louisiana.

The death occurred when Mr. Rodrigue fell from high in the derrick of a drilling rig positioned on a fixed structure (artificial island) located in the Outer Continental Shelf approximately twenty-eight miles south of the Louisiana coastline. Mr. Rodrigue landed on the structure floor sustaining crushing injuries which resulted in his immediate or almost immediate death.

The fixed structure (artificial island) consists of a platform, i.e., a flooring, which was about 60 feet above the water level and which was supported by posts (legs) permanently fixed into the seabed. On this platform is a drilling rig with derrick.

The drilling rig was at the time owned and operated by Mayronne Drilling Company which was in-

sured by Aetna Casualty and Surety Company. Humble Oil and Refining Company was the owner of the structure and the mineral lease involved. Mr. Rodrigue was an employee of the Loomis Hydraulic Testing Company which had been called by Humble to come onto the structure to perform a test on the drill pipe then being used by Mayronne.

It was alleged in the three suits (two civil actions and one in admiralty pursuant to the Death on the High Seas Act, 46 U.S.C. 761-768) that Mr. Rodrigue died in the course of performing the test and that his death was caused by the joint negligence of Mayronne and Humble.

The reason for bringing more than one suit for the same death was to obtain full recompense for all of the damages sustained because of the death of Mr. Rodrigue. The two civil actions, one against Humble and Aetna¹ with Federal jurisdiction based on diversity of citizenship and the other against Mayronne Drilling Company with Federal jurisdiction based on the Outer Continental Shelf Lands Act, 43 U.S.C. 1333 (b), are brought pursuant to the Louisiana Death Act, Article 2315 of the Louisiana Civil Code. The Louisiana Death Act grants a cause of action not only for the pecuniary losses sustained as a result of the death but also for loss of society, love, companionship, and affection. The Death on the High Seas Act only grants remuneration for pecuniary losses.

¹ Aetna Casualty and Surety Company, as liability insurer of Mayronne Drilling Company was made a party defendant pursuant to the Louisiana Direct Action Statute, La. R.S. 22:655.

The three cases were consolidated for purposes of trial with the jury to hear the two Civil Actions, and the Judge in Admiralty to apply the Death on the High Seas Act.

On the morning of the trial, motions to dismiss the Civil Actions were filed by the defendants and were granted, the trial judge holding that the Death on the High Seas Act is the exclusive remedy for death occurring on an artificial island in the Outer Continental Shelf even though the Outer Continental Shelf Lands Act expressly extends the law of the adjacent state to the artificial islands.

Then the Court tried the admiralty action pursuant to the Death on the High Seas Act, and finding Mayronne solely at fault, awarded plaintiff the full amount of the pecuniary losses sustained by the death of Butley Rodrigue. The Court's opinion in the admiralty action is reported at 266 F. Supp. 1.

Plaintiff, seeking also recompense of the nonpecuniary losses compensable under the state death act, appealed the dismissal of the two Civil Actions.

The United States Court of Appeals for the Fifth Circuit, in a brief opinion simply referred to its very recent decision in the *Dore* case and affirmed, holding "the exclusive remedy under the circumstances is the Death on the High Seas Act."

The Dore Case

The *Dore* case is an action for the death of Joseph Dore which occurred on March 14, 1965. Decedent, Joseph Dore, an oil field worker, was killed while working on a stationary offshore drilling platform on the Outer Continental Shelf in the Gulf of Mexico south of the State of Louisiana, approximately fifty miles seaward from Marsh Island, when a crane which he was operating collapsed and fell more than sixty feet. By stipulation between the parties, it was agreed that the work was being performed on the "Outer Continental Shelf" and that the accident occurred in the following manner:

"That the decedent was a crane operator working on a crane on a pedestal on a stationary platform; That the crane was being used to unload a barge or vessel located immediately next to the stationary platform; That while a load was being lifted from the vessel with an intention to place it on the stationary platform, the crane toppled over with the decedent in the crane and fell to the barge or vessel below, which was being unloaded and the decedent was killed when he fell on the barge."²

Petitioner brought a single action claiming a remedy under the General Maritime Laws, the Death on the High Seas Act, 46 U.S.C.A. 761, et seq., and under

² This stipulation was attached to the trial judge's certification under Rule 54 (b), Federal Rules of Civil Procedure. See Footnote No. 4 in the Court of Appeals decision in the *Dore* case which is reproduced in the single appendix.

Article 2315 of the Civil Code of the State of Louisiana against the Link Belt Company and Road Equipment Company, Inc. for alleged negligence in designing, manufacturing, assembling, selling, installing and servicing the crane which was involved in the accident and which caused the death of Joseph Dore, and for alleged breach of expressed and implied warranties as manufacturers, assemblers, sellers and installers of the crane. For herself and her three children, petitioner claimed recompense not only for pecuniary losses recoverable under the Death on the High Seas Act but also for the nonpecuniary losses (loss of love and affection, etc.) available under the Louisiana Death Act.

The district court, on Motions to Dismiss filed by the defendants, rendered judgment on October 26, 1966, restricting the plaintiffs' claims to the Death on the High Seas Act, 46 U.S.C.A. 761, et seq., and striking from the complaint all items of damages other than pecuniary loss sustained. The district judge then certified the question pursuant to rule 54 (b), Federal Rules of Civil Procedure.

The United States Court of Appeals for the Fifth Circuit affirmed, holding that the exclusive remedy of plaintiff in *Dore* was the Death on the High Seas Act and ostensibly relying on a Ninth Circuit case, *Higa vs. Transocean Airlines*, 230 F.2d 780 (1956), cert. den. 352 U.S. 802. (But such reliance was misplaced because the *Higa* death did not occur in the Outer Continental Shelf but rather occurred in the open ocean at a place where no statute or jurispru-

dence had extended the applicability of the state death act—in fact the court in the *Higa* case specifically stated that had there been such a statute or jurisprudence the state law would have supplemented the Death on the High Seas Act.)³

ARGUMENT.

The recovery which is sought here is for recompense for losses in addition to the losses for which the Death on the High Seas Act allows recovery. The Death on the High Seas Act only allows recompense for the pecuniary losses sustained because of death (see 46 U.S.C. 762, and see for example, *Inger vs. Cie de Transports*, 323 F.2d 257; cert. den. 376 U.S. 949) whereas the Louisiana Death Act additionally grants recompense for loss of love, society, affection and companionship. See for example, *Silverman vs. Travelers*, 277 F.2d 257 (5th Cir. 1960); *Parker vs. Smith*, 147 So.2d 407 (La. App. 1963).

³ Moreover, in the *Dore* case, the Fifth Circuit quoted from the above referred to *Higa* case, but the language, the exchange between the legislators, that is quoted from the *Higa* case in the *Dore* case for the proposition that the Death on the High Seas Act is the exclusive remedy is not pertinent to that issue! In that quoted language, the court in the *Higa* case was dealing with an additional issue that was present in the *Higa* case, to-wit: whether a Death on the High Seas Act case could be heard by a jury in a civil action or whether, on the other hand, it could be heard only in admiralty by the judge alone. Properly, the *Higa* court quoted the congressmen in ruling that the Death on the High Seas Act must be heard in admiralty. But this quoted language has nothing to do with whether the Death on the High Seas Act is an exclusive remedy—yet that is the issue for which the Fifth Circuit in the *Dore* case cites the quoted exchange between the congressmen as controlling! See the *Dore* case, at p. 60 in the single appendix (paragraph beginning "The legislative history . . .").

The Outer Continental Shelf Lands Act, a Federal Statute, adopts the law of the adjacent state, here Louisiana, to the extent that it is not inconsistent with federal law and specifically declares that state law to be the law of the United States and also specifically declares that that law is applicable to the fixed structures as if they were within the State of Louisiana. That Statute, in pertinent part reads:

43 U.S. Code, sec. 1331 (a) (2)

"To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the Outer Continental Shelf and artificial islands and fixed structures thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the Outer Continental Shelf * * * all of such applicable laws shall be administered and enforced by the appropriate officers of the United States * * *."

Of course, no attempt at a double recovery is being made. Should this court rule that the now federally adopted Louisiana Death Act and the Death on the High Seas Act are both applicable, there would be only one recompense for the pecuniary losses; the allowance of recompense for the nonpecuniary losses

as additionally allowed by Louisiana would simply supplement the recovery allowed by the Death on the High Seas Act.

That portion of the Louisiana Law which allows a remedy for nonpecuniary losses would fill the void, i.e. provide a remedy which is not present, in Federal law relative to recompense for loss of love, society, affection and companionship in wrongful death actions for death on the high seas.

As seen in the quoted portion of the Outer Continental Shelf Lands Act above, the only limitation or reservation in the blanket application of the law of the adjacent state (as adopted federal law) to the artificial islands in the Outer Continental Shelf is that portion of the state law which is inconsistent with the other federal laws and regulations is not to be applied. As will be shown below, the jurisprudence clearly shows that it is not inconsistent with federal laws (the Death on the High Seas Act) and regulations for state law to grant additional remedies in death cases to what is available under federal law.

THE DEATH ON THE HIGH SEAS ACT SPECIFICALLY PROVIDES THAT IT DOES NOT AFFECT STATE REMEDIES.

The language contained in the Death on the High Seas Act specifically provides that state rights of action or remedies for death shall not be affected by the act! The Death on the High Seas Act provides:

Section 7. Exceptions from operation of chapter

The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter." (46 U.S.C. Section 767.)

As of the time of the adoption of the Death on the High Seas Act (1920), there were state statutes which were construed as giving or regulating rights of action or remedies for death on the high seas. See for example, *The Hamilton (Old Dominion Steamship Company vs. Gilmore)*, 207 U.S. 398, 28 S. Ct. 133 (1907); *Southern Pac. Co. vs. De Valle Da Costa*, 190 F. 689 (1st Cir. 1911); *International Nav. Co. vs. Lindstrom*, 123 F. 475 (2nd Cir. 1903); *The E. B. Ward, Jr.*, 17 F. 456 (C.C. E.D. La. 1883).

With the opinion of Mrs. Justice Holmes, the United States Supreme Court in the case entitled *The Hamilton (Old Dominion Steamship Company vs. Gilmore)*, 207 U.S. 398, 28 S. Ct. 133 (1907) ruled that the Delaware Death Act which allowed the widow or widower to "maintain an action for and recover damages for death and loss occasioned by negligence or unlawful violence" could and did apply to a death which occurred on the high seas. In pertinent part the Court ruled:

"A certiorari was granted by this court to settle the question, as stated by the petitioner,

whether the Delaware statute applies to a claim for death on the high seas, arising purely from tort * * * the judiciary act of 1789 [1 Stat. at L. 77, chap. 20, sec. 9], 'saving to suitors, in all cases, the right of a common-law remedy where the common law is competent to give it' (Rev. Stat. sec. 563, cl. 8, U. S. Comp. Stat. 1901, p. 457), leaves open the common-law jurisdiction of the state courts over torts committed at sea. This, we believe, always has been admitted. * * * Accordingly, it has been held that a statute giving damages for death caused by a tort might be enforced in a state court, although the tort was committed at sea. *American S. B. Co. v. Chase*, 16 Wall. 522, 21 L. Ed. 369. So far as the objection to the state law is founded on the admiralty clause in the Constitution, it would seem not to matter whether the accident happened near shore or in mid-ocean, notwithstanding some expressions of doubt."

The Court concluded that the claimants were entitled to the full benefit of the statute. The Delaware Act involved was not only a survival statute but also allowed recovery for damages to the widow or widower because of the death. It is the same type of act as is the Louisiana Death Act.

The United States Circuit Court of Appeals for the Fifth Circuit, in the case entitled *The E. B. Ward, Jr.*, 17 Fed. 456 (1883), applied the very same Louisiana Death Act that is at issue in the instant case.

to allow damage for wrongful death, including the nonpecuniary damages for losses (there termed loss of society) to a death which occurred in a collision between two vessels on the high seas. The Court held that the Louisiana wrongful death act was applicable and granted recovery even though the death had occurred on the high seas.

THE LEGISLATIVE HISTORY OF THE DEATH ON THE HIGH SEAS ACT SHOWS THAT IT IS NOT AN EXCLUSIVE REMEDY AND THAT ON THE CONTRARY, STATE REMEDIES FOR DEATH ON THE HIGH SEAS WERE SPECIFICALLY RESERVED.

The legislative history of the Death on the High Seas Act makes it absolutely clear that the Death on the High Seas Act is not an exclusive remedy; the legislative history shows that it was specifically intended that the rights then being granted by some states for death on the high seas should not be affected by the Death on the High Seas Act.

Immediately before it was passed, the then Senate Bill No. 2085 was amended with the express purpose of providing that the Death on the High Seas Act shall not affect the state remedies for death on the high seas. Before amended, Section 7 of the Act read as follows:

"Sec. 7. That the provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this act

as to causes of action accruing within the territorial limits of any State. Nor shall this act apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone."

The amendment deleted the last portion of the first sentence, i.e. deleted were the words "as to causes of action accruing within the territorial limits of any State".

As seen in the Congressional Record, the legislators at the time of the enactment of the Death on the High Seas Act, were questioning and differing in opinion among themselves as to whether the proposed act (as it was before the said amendment) would have the effect of making the Death on the High Seas Act the exclusive remedy for death on the high seas so as to make the state remedies unavailable.⁴

Mr. Mann of Illinois stated that he wanted to get the question of whether state remedies for death on the high seas were to be excluded before the House for consideration and that accordingly he was offering an amendment (the amendment referred to above, which was enacted) which amendment would, if enacted, make it clear that state remedies would not be excluded.⁵ The Congressional Record shows:

⁴ Congressional Record—House, 66th Congress, 2nd. Session (1920) V, 59, pp. 4482-4486 (for March 17, 1920).

⁵ Page 4484, Congressional Record—House, 66th Congress, 2nd. Session (1920) V, 59 (for March 17, 1920).

"Mr. MANN of Illinois. In order to get it before the House for consideration, I move to strike out, page 3, line 12, after the word 'act,' the words 'as to causes of action accruing within the territorial limits of any State.'

The SPEAKER pro tempore. The gentleman from Illinois offers an amendment, which the Clerk will report. The Clerk read as follows:

Amendment offered by Mr. MANN of Illinois: page 3, line 12, after the word 'act,' strike out 'as to causes of action accruing within the territorial limits of any State.'

Mr. MANN of Illinois. If the amendment which I have suggested should be agreed to, the bill would not interfere in any way with rights now granted by any State statute, whether the cause of action accrued within the territorial limits of the State or not."

Mr. Mann's amendment was called to a vote and passed.

Prior to the vote on the amendment there was considerable debate, some of the legislators believing that uniformity was the prevailing consideration. The committee report⁷ which accompanied the bill into the House and which is dated February 25, 1920, some 20 days prior to the amendment, indicated that

⁶ Page 4484, Congressional Record—House, 66th Congress, 2nd. Session (1920) V. 59 (for March 17, 1920).

⁷ 66th Congress, 2nd. Session, House of Representatives, Report No. 674, dated February 25, 1920 (designated to accompany S. 2085) entitled "Actions for Death on the High Seas".

at least some if not most of the advocates for the bill intended that the remedy be an exclusive one and were of the definite opinion that the proposed Section 7 of the act (as it read before Mr. Mann's amendment) made the remedy exclusive.⁸ This highlights the clarity of the intent of the legislators who voted for and passed Mr. Mann's amendment.

In the Congressional Record, the case entitled "The Hamilton", 207 U.S. 398, was mentioned as an example of the states allowing recovery pursuant to the state death act for deaths on the high seas.⁹ In the legislative discussion, it was noted that some states granted remedies, (i.e. the death act of some states was deemed to apply on the high seas) and some did not.¹⁰ In this connection, it is to be noted that the Louisiana Death Act was one of those which had, prior to the Death on the High Seas Act, been applied to allow recovery for death on the high seas. In *The E. B. Ward, Jr.*, 17 Fed. 456 (1883) the same Louisiana Death Act that is at issue in the instant case was applied to allow damages for wrongful death, including the nonpecuniary damages for losses (there termed loss of society) to a death which occurred in a collision between two vessels on the high seas.

⁸ See especially the letter of Honorable Harrington Putnam which was attached to and made a part of the House Report No. 674 (found at Pages 2, 3, and 4 of said report).

⁹ Page 4483, Congressional Record—House, 66th Congress, 2nd. Session (1920) V. 59 (for March 17, 1920).

¹⁰ Page 4483, Congressional Record—House, 66th Congress, 2nd. Session (1920) V. 59 (for March 17, 1920).

In discussing the legislative history of the Death on the High Seas Act the Ninth Circuit Court of Appeals in the case of *Higa vs. Transocean Airlines*, 230 F.2d 780 (1956) cert. den. 352 U.S. 802, referred to the Louisiana case, *The E. B. Ward, Jr.*, *supra*, as one of the cases that Mr. Mann had in mind when he offered the amendment. The Court stated:

"In considering this contention it is of importance that the High Seas Act *deprived no state or federal court of a then existing right*. As to the state courts 46 U.S.C.A. sec. 767 provides:

Sec. 767. Exceptions from operation of chapter. The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter.

As originally drafted, the bill had an added clause limiting the state to acts in its own waters, reading: 'as to causes of action accruing within the territorial limits of any state'. Representative Mann offered an amendment striking out this clause. Mann gave as his reason for striking out the limiting clause that it was to save state statutes giving jurisdiction in high seas death cases. Some opposed because they wanted the Act to be exclusive. Others agreed to the amendment on the ground that Section 767 as passed would be held invalid on the ground of the constitutional control of Congress discussed above. Congress agreed with Mann who offered

the amendment and the limitation was stricken from the bill.

Further, Mann no doubt had in mind some one of the federal cases, holding that the laws of the state controlled the action of persons within ships on the high seas and had construed their death statutes as applying there. *Southern Pac. Co. vs. De Valle Da Costa*, 1 Cir., 1911, 190 F. 689; *International Nav. Co. vs. Lindstrom*, 2 Cir., 1903, 123 F. 475; *The James McGee*, S.D. N.Y. 1924, 300 F. 93; *The E. B. Ward, Jr.*, C.C. E.D. La. 1883, 17 F. 456. (Emphasis added.)

Even if Congress had not agreed with the interpretation of the proponent of the amendment, we would hesitate to construe the exceptive clause as depriving the states of the then existing jurisdictions shown as exercised in the above cited cases."

Thus, in the instant case, there is the pre-existing unpre-empted Louisiana State Death Act available under its own power and also the same Louisiana Death Act available to the area in question by the Federal Statute (the Outer Continental Shelf Lands Act).

It is abundantly clear from its legislative history that the Death on the High Seas Act is not an exclusive remedy and that in the instant case, the Louisiana Death Act is available to supplement it.

THE JURISPRUDENCE CLEARLY SHOWS THAT THE DEATH ON THE HIGH SEAS ACT IS NOT AN EXCLUSIVE REMEDY AND THAT STATE STATUTES AND OTHER FEDERAL STATUTES PROPERLY SUPPLEMENT IT AND GRANT COLLATERAL OR ADDITIONAL REMEDIES.

The Second Circuit Court of Appeals in the case of *Doyle vs. Albatross Tanker Corporation*, 367 F.2d 465, 1967 A.M.C. 201, had under consideration the situation in which a seaman had been killed on the high seas. Though his administrators had brought an action under the Jones Act, they wished to supplement that action by also suing the employer under the Death on the High Seas Act so as to take advantage of rights allowed under the Death on the High Seas Act which were not available under the Jones Act. The defendant there contended that either the Jones Act or the Death on the High Seas Act should be the exclusive remedy and cited *Lindgren vs. U. S.*, 281 U.S. 38 (1930) and *Gillespie v. U. S. Steel Corporation*, 379 U.S. 148 (1964). The Court readily distinguished *Lindgren* and *Gillespie* stating that the congressional intent was that as to deaths on the high seas the remedies were not exclusive. The Court ruled:

"Moreover, contrary to appellants' contentions, it appears to be the settled law of the lower federal courts, expressed in numerous cases, that both statutory remedies may be availed of for the purpose of recovering damages for the wrongful deaths of seamen caused by occur-

rences on the high seas, and that the action in admiralty created by the Death on the High Seas Act may be pursued by the personal representative of a deceased sailor as well as the action at law provided for in the Jones Act. See, e.g., *Chermesino vs. Vessel Judith Lee Rose, Inc.*, 211 F. Supp. 36 (D. Mass., 1962, *aff'd*, 317 F. (2d) 927 (1 Cir.), *cert. denied*, 375 U.S. 931 (1963); *Moore-McCormack Lines, Inc. vs. Richardson*, 1962 A.M.C. 804, 295 F. (2d) 583 (2 Cir. 1961), *cert. denied*, 368 U.S. 989, 1962 A.M.C. 2211 (1962); *Whitaker vs. Blidberg Rothschild Co., Inc.*, 1961 A.M.C. 773, 195 F. Supp. 420 (E.D. Va.) *aff'd*, 1962 A.M.C. 678, 296 F. (2d) 554 (4 Cir., 1961); *Civil vs. Waterman S. S. Corp.*, 1955 A.M.C. 21, 217 F. (2d) 94 (2 Cir., 1954); *Middleton vs. Luckenbach S. S. Co.*, 1934 A.M.C. 649, 70 F. (2d) 326 (2 Cir., 1934); *Ridgedell vs. Olympic Towing Corp.*, 1962 A.M.C. 1831, 205 F. Supp. 952 (E.D. La., 1962). *Petition of Gulf Oil Corp.*, 1960 A.M.C. 341, 172 F. Supp. 911 (S.D.N.Y., 1959); *McLaughlin vs. Blidberg Rothschild Co., Inc.*, 1959 A.M.C. 1385, 167 F. Supp. 714 (S.D.N.Y., 1958); *Tetterton vs. Arctic Tankers, Inc.*, 1954 A.M.C. 397, 116 F. Supp. 429 (E.D. Pa., 1953); *Syville vs. Waterman S. S. Corp.*, 1949 A.M.C. 1578, 83 F. Supp. 718 (S.D.N.Y. 1948); *Four Sisters*, 1947 A.M.C. 1623, 75 F. Supp. 399 (D. Mass., 1947). The text writers agree with this analysis. See 1 Benedict, Admiralty, 384 (6th ed., 1940); 2 Norris, Law of Seamen, 775-77 (2d ed.,

1962); Gilmore & Black, *The Law of Admiralty*, 304 (1957)."

In *Higa vs. Transocean Airlines*, 230 F.2d 780 (1956) cert. den. 352 U.S. 802, a plane on its way to Hawaii crashed in the high seas and caused the death of Higa. Higa had been a citizen of Hawaii. His administrators brought suit seeking recovery under the Death on the High Seas Act and also recovery under the Hawaiian wrongful death statute. The Court took special note that the plane had been owned not by an Hawaiian corporation but by a California corporation. The Court dismissed the action based on the Hawaiian Code because "there is no provision of that Code or decisions of the Hawaiian Courts making it applicable to death on the high seas beyond the territorial waters" 230 F.2d at 781. This language is most favorable to petitioners in the instant cases inasmuch as there is a provision of law, the Outer Continental Shelf Lands Act specifically applying the Louisiana Death Act to the locality where the deaths occurred and there is a decision, *The E. B. Ward, Jr.*, 17 Fed. 456, applying the Louisiana Death Act to death on the high seas.

There are additional numerous decisions of the district courts touching the question at issue. For example, the court in *Abbot vs. J. S.*, 207 F. Supp. 468 (S.D.N.Y. 1962), 1962 A.M.C. 750 ruled:

"The Supreme Court held that before the DHSA there was no action for wrongful death under the

general maritime law. *Western Fuel Co. vs. Garcia*, 257 U.S. 233 (1921); *Harrisburg*, 119 U.S. 199 (1886). However, admiralty courts in the absence of the DHSA invoked state wrongful death statutes to grant such recovery. *Western Fuel Co. vs. Garcia*, *supra*, (death in territorial waters); *Hamilton*, 207 U.S. 398 (1907) (death on high seas). The DHSA created a federal cause of action for wrongful death on the high seas, and, when death occurs in territorial waters, preserved the rights given by the wrongful death statute of that state, 46 U.S. Code, sec. 767. It is generally agreed that the DHSA does not preempt the field of recovery for injuries sustained on the high seas which result in death." (Emphasis added.) See Comment, *supra*, 60 Colum. L. Rev. at 536-37, and authorities cited.

In *McLaughlin vs. Blidberg Rothschild Company*, 156 F. Supp. 379 (S.D.N.Y. 1957) and in the companion case (*McLaughlin vs. Blidberg Rothschild Company*, 156 F. Supp. 381) involving deaths on the high seas in which the plaintiffs claimed pecuniary losses under the Death on the High Seas Act requesting trial by the Judge in admiralty and also brought suit, with trial by jury, under the Japanese law which allows recovery not only for pecuniary losses but for the other damages as well. The procedure there was the same as requested by Petitioner Rodrigue in the instant case. In the *McLaughlin* cases the Court allowed the procedure and ordered a joint trial of

the civil and admiralty actions inasmuch as there were some common issues involved.

Thus it is clearly seen that the Death on the High Seas Act is not an exclusive remedy.

Certainly, in light of the cases cited and referred to above it can not be said that it is inconsistent with federal laws and regulations for state law to grant additional remedies in death cases to what is available under federal law. Additionally, see *Romero vs. International Terminal Operating Co.*, 358 U.S. 354, 1958 A.M.C. 832, wherein this Court stated that state death statutes which grant more than what would have been granted by the bare federal maritime law are not "inconsistent" with federal law or federal maritime law. The Court stated:

"It is true that state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system. But this limitation still leaves the States a wide scope. State-created liens are enforced in admiralty. State remedies for wrongful death and state statutes providing for the survival of actions, both historically absent from the relief offered by the admiralty, have been upheld when applied to maritime causes of action. Federal courts have enforced these statutes. State rules for the partition and sale of ships, state laws governing the specific performance of arbitration agreements, state laws regulating the effect of a

breach of warranty under contracts of maritime insurance—all these laws and others have been accepted as rules of decision in admiralty cases, even, at times, when they conflicted with a rule of maritime law which did not require uniformity.” (Emphasis added.)

As seen in the quoted language above, wrongful death is not an area of law requiring absolute uniformity; especially is this true when the Federal Death on the High Seas Act provides a uniform basic recovery with the State Death laws, where available, supplementing the basic recovery.

The state death acts are applied regularly in admiralty. See, for example *Tungus v. Skovgaard*, 358 U.S. 588, 1959 A.M.C. 813; *United Pilots Association v. Helecki*, 358 U.S. 613, 1959 A.M.C. 588; *Hess vs. U.S.*, 361 U.S. 314, 1960 A.M.C. 527; *Byrd vs. Napoleon Avenue Ferry*, 152 F. Supp. 573 (E.D. La. 1954); aff. 227 F.2d 958 (5th Cir., 1954). All of the above cases, and many, many others, illustrate that in a federal jurisdiction, i.e. over the navigable waters of the United States, the state death acts, which differ from state to state, are regularly used in actions for wrongful death.

Similarly, a case most in point is the decision of the United States Supreme Court in the case of *Just v. Chambers*, 312 U.S. 383, 61, 687, 1941 A.M.C. 430. In that case the court had before it the then novel question of whether in an admiralty proceeding the

causes of action for personal injury die with the person or whether, on the other hand, a state survival statute could be applied in admiralty so as to preserve the claim. In dealing with that question the Supreme Court ruled:

"For, while the injury occurred on navigable waters, these were within the limits of Florida whose legislation provided that the cause of action should survive. And it is not a principle of our maritime law that a court of admiralty must invariably refuse to recognize and enforce a liability which the State has established in dealing with a maritime subject. *On the contrary, there are numerous instances in which the general maritime law has been modified or supplemented* (emphasis added) *by state action, as e.g. in creating liens for repairs or supplies furnished to a vessel in her home port. The Lottawanna, 88 U.S. 558, 580; The J. E. Rumbell, 148 U.S. 1, 12. With respect to maritime torts we have held that the State may modify or supplement the maritime law by creating liability which a court of admiralty will recognize and enforce when the state action is not hostile to the characteristic features of the maritime law or inconsistent with federal legislation. The City of Norwalk, 55 Fed. 98; Western Fuel Company v. Garcia, 257 U.S. 232, 242; Great Lakes Company v. Kierejewski, 261 U.S. 479, 1923 A.M.C. 441; Vancouver Steamship Co. v. Rice, 288 U.S. 445, 1933 A.M.C. 487."*

Immediately before the portion of the opinion above, the Supreme Court very pertinently (here) observed:

"The 'Death on the High Seas' Act, 46 Mason's U.S.C., secs. 761-768, is not applicable, as it occupies a limited field and even as to wrongful death provides that the provisions of state statutes shall not be affected." (Emphasis added.)

THERE IS NOTHING UNUSUAL IN ALLOWING CUMULATIVE REMEDIES FOR THE SAME INCIDENT.

There is nothing whatsoever unusual in allowing cumulative remedies for the same incident. In fact, it is the rule rather than the exception in maritime cases. As is seen in *Doyle vs. Albatross Tanker Corporation*, 367 F.2d 465, both the Jones Act and the Death on the High Seas Act can be applied to the same death. That an injured seaman is entitled to a remedy under both the doctrine of unseaworthiness and the Jones Act is "old hat" to say the least. Additionally, the allowance of both an action for damages and an action for maintenance and cure arising out of the same injury is universally recognized and unquestioned.

The men who work on the offshore oil platforms in the Outer Continental Shelf do so at great risk to their lives and incur the perils of the sea. Yet they are denied a Jones Act remedy and the warranty of seaworthiness. See for example, *Movable Offshore Com-*

pany vs. Ousley, 346 F.2d 870 (C.A. 5th, 1965): Inasmuch as there is a statute, the Outer Continental Shelf Lands Act, extending the law of the adjacent state to the artificial islands, why should these men be denied the supplemental remedy?

CONCLUSION.

It is respectfully submitted that the Death on the High Seas Act does not provide the exclusive remedy for wrongful death occurring upon one of the artificial islands in the Outer Continental Shelf off the coast of Louisiana but rather that the Louisiana Death Act as extended by the Outer Continental Shelf Lands Act supplements it and provides additional remedies.

Accordingly, the decisions of the Fifth Circuit Court of Appeals in the matters entitled *Paulette Boudreaux Rodrigue, et al. against Aetna Casualty and Surety Company, et al.*, and *Ella Mae Dubois Dore, Individually, etc. against The Link Belt Co., et al.*, should be reversed, and these cases should be remanded for further proceedings.¹¹

Respectfully submitted,

.....
A. Deutsche O'Neal,

¹¹ The *Dore* case should be remanded to the United States District Court for the Western District of Louisiana, Lafayette Division. As to the two civil actions in the *Rodrigue* case, Civil Action No. 3298 of the Eastern District of Louisiana should be remanded to the Eastern District of Louisiana,

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Baton Rouge Division, and Civil Action No. 3109 of the Eastern District of Louisiana should be remanded to the United States Court of Appeals for the Fifth Circuit for ruling on one issue which was not acted on by the Fifth Circuit in view of its dismissal of each of the civil actions on the ground that there was to be no civil action for the death, the exclusive remedy being the Death on the High Seas Act. The unruléd upon issue in the appeal of Civil Action No. 3109 is whether the dismissal, on summary judgment, of one of the defendants in that civil action was proper. The trial judge dismissed, on motion for summary judgment, Aetna Casualty and Surety Company, ruling that the Louisiana Direct Action Statute La. R.S. 22:655 did not apply to an accident occurring on a fixed platform in the Outer Continental Shelf. This ruling was specifically included in the appeal of Civil Action No. 3109 (See Rodrigue Record p. 114). While the appeal to the Fifth Circuit was pending, the Louisiana Supreme Court in another case ruled that the Louisiana Direct Action Statute does apply to accidents occurring outside the boundaries of the State of Louisiana (*Webb vs. Zurich Insurance Company*, 205 So.2d 398 (La. 1967), followed in *Michel vs. Bahn*, 207 So.2d 150 (La. App. 4th Cir. 1968) and as to an accident occurring on a fixed structure in the Outer Continental Shelf in *Taylor vs. Fishing Tools, Inc.*, 274 F. Supp. 666 (E.D.La. 1967). However, inasmuch as this issue was not reached by the Fifth Circuit in the appeal in Civil Action No. 3109, Civil Action No. 3109 should be remanded to the Fifth Circuit for official ruling.

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CERTIFICATE.

This is to certify that I have this day mailed a copy of the above and foregoing Original Brief on Behalf of Petitioners, Paulette Boudreaux Rodrigue, et al. and Ella Mae Dubois Dore, Individually, etc., to Mr. Richard C. Baldwin, Adams and Reese, 847 National Bank of Commerce Building, New Orleans, Louisiana; Mr. Thomas W. Thorne, Jr., Lemle, Kelleher, Kohlmeyer, Matthews & Schumacher, National Bank of Commerce Building, New Orleans, Louisiana; Mr. Lancelot P. Olinde, Humble Oil & Refining Company, P. O. Box 60626, New Orleans, Louisiana; Mr. H. Lee Leonard, Voorhies, Labbe, Fontenot, Leonard & McGlasson, Lafayette, Louisiana; and James E. Diaz, Davidson, Meaux, Onebane & Donohoe, 201 West Main Street, Lafayette, Louisiana.

December, 1968.

.....
PHILIP E. HENDERSON.

JAN 27 1969

JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL.
AND
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,

versus

AETNA CASUALTY AND SURETY COMPANY, ET AL.
AND
THE LINK BELT COMPANY, ET AL.,
Respondents.

ORIGINAL BRIEF ON BEHALF OF RESPONDENTS.

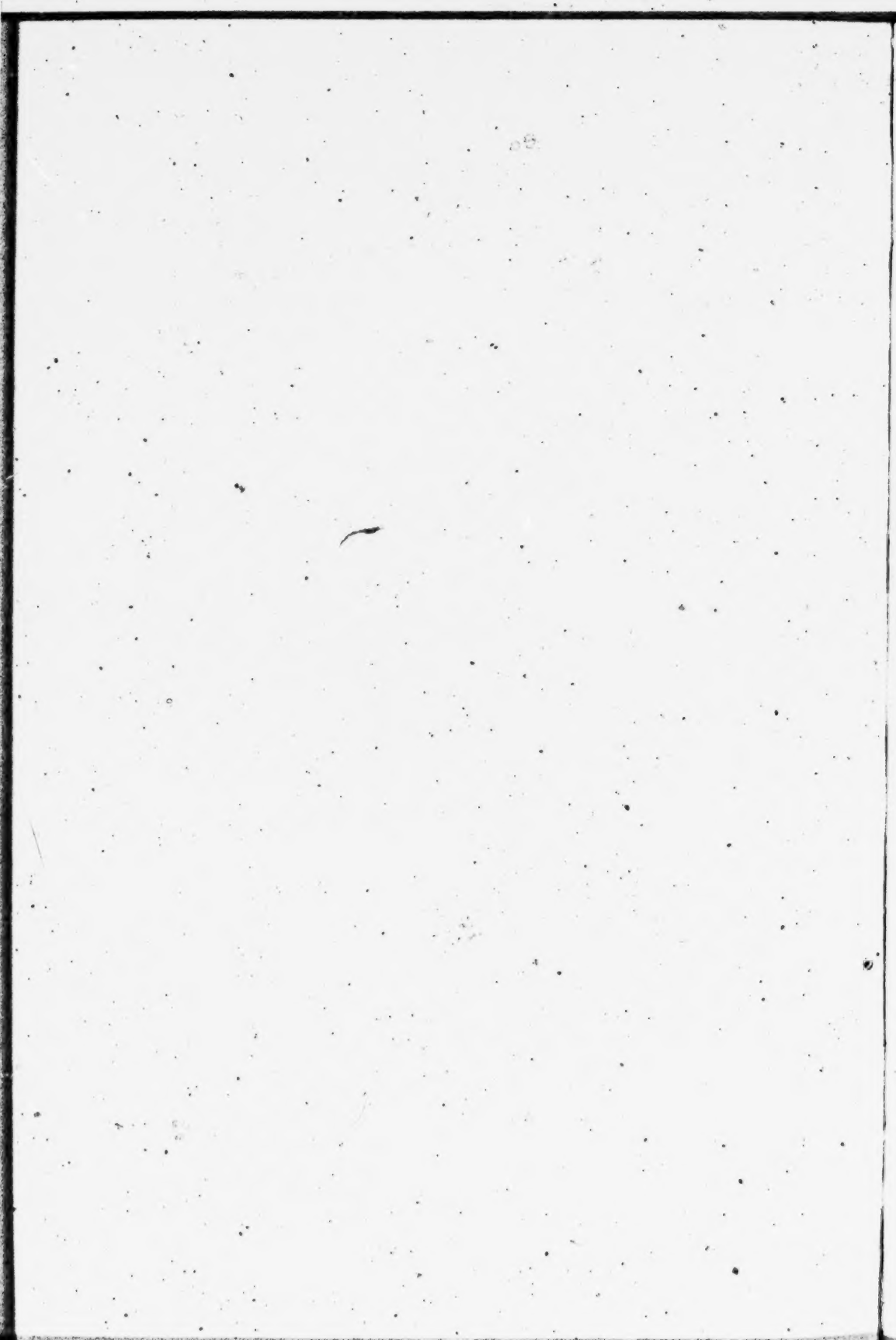
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INDEX.

	Page
THE QUESTIONS PRESENTED FOR REVIEW	2
STATEMENT OF THE CASE	2
The Rodrigue Case	2
The Dore Case	5
ARGUMENT	7
The Outer Continental Shelf Act specifically provides which law governs controversies arising on the Outer Continental Shelf ..	7
The Death on the High Seas Act held applicable to stationary platforms by the Fifth Cir- cuit	8
Legislative History indicating that the Death on the High Seas Act was an effort to estab- lish uniformity and an exclusive remedy	10
The jurisprudence clearly shows the exclusive- ness of the Death on the High Seas Act in situations involving deaths on the high seas	12
The legislative history showing the debate in the House and the fact that the legislators understood, contrary to quotations chosen from the same debate by plaintiff in its brief, that the Death on the High Seas Act was the exclusive remedy in the Admiralty Court	16

INDEX—(Continued):

	Page
The Outer Continental Shelf Act prevents application of state statutes to platforms in the Gulf if the state statutes are in any way inconsistent with the applicable federal law	25
The Fifth Circuit Court of Appeals determines that the Death on the High Seas Act and the Louisiana Death Action are inconsistent	27
The particular inconsistencies between the two statutes:	
Proper Party Plaintiff and/or Party in Interest	28
Elements of Damage	30
Delay for Filing Suit	31
Defenses	32
Contribution and/or tort Indemnity between joint tort feasers	33
Use of Jury	35
CONCLUSION	36
CERTIFICATE OF SERVICE	38

III

TABLE OF AUTHORITIES.

	Page
Cases:	
Blumenthal v. United States, 189 F.Supp. 445, (E.D. Penn., 1960) Affirmed 306 F.2d 16	14
Brown v. American Hawaiian S.S. Co., 211 F.2d 16, 18 (3 Cir. 1954)	33
Canillas v. Joseph H. Carter, Inc., 280 F.Supp. 934 (S.D. N.Y., 1968)	14
Cunningham v. Bethlehem Steel Co., 231 F. Supp. 934 (S.D. N.Y., 1964)	14
Curd v. Todd-Johnson Dry Docks, 213 F.2d 864 (App. 1954)	33
D'aleman v. Pan American World Airways, 259 F.2d 493 (2nd Cir., 1958) concurring opin- ion of Judge Waterman, page 496	14
Danks v. Maher, (App. 1965) 177 So.2d 412	33
Dore, et al. v. Link Belt Co., et al., 391 F.2d 671 (1968)	27
E. B. Ward, Jr., 17 F. 456 (Cir. Ct. E. D. La. 1883)	17
First National Bank in Greenwich v National Airlines, Inc., 171 F.Supp. 528 (S.D. N.Y., 1958) Cert. den. 368 U.S. 859, 82 S.Ct. 102, 7 L. Ed. 2d 57, Affirmed 288 F.2d 621 ..	14
Fradger v. Shaffer-Stein Corp., (App. 1954), 73 So. 2d 612	33
Frisard v. Oalmann, (App. 1965), 175 So.2d 407	33
Gillespie v. United States Steel Corp., 379 U.S. 150, 85 S.Ct. 308 (1964)	10
Guess v. Read, 290 F.2d 622 (5th Cir., 1961) ..	3
Halcyon Lines v. Haenn Ship Ceiling & Re- fitting Corp., (1952), 342 U.S. 282, 72 S. Ct. 277	33
Harvey v. Travelers Insurance Company (1964), 163 So.2d 915	34

IV

TABLE OF AUTHORITIES—(Continued):

Page

Cases—(Continued):

Higa v. Trans-Ocean Airlines, 230 F.2d 780 (9th Cir. 1955) reh. den. (1956) writ cert. den., 352 U.S. 802, 77 S.Ct. 20 (1956)	2
Igneri v. CIE de Transport Oceaniques, 323 F.2d 257 (2nd Cir., 1963)	14
International Navigation Co. v. Lindscomb, 123 F. 475 (2nd Cir. 1903)	18
Jennings v. Goodyear Aircraft Corporation, 227 F.Supp. 246, (Del. 1964)	13
King v. Pan American World Airways, 166 F. Supp. 136, Affirmed 270 F.2d 355, Cert. den. 362 U.S. 928, 4 L. Ed. S. 746	14
Lee v. Peerless Insurance Company, (1966), 248 La. 982, 183 So.2d 328	33
Loffland Brothers Company v. Roberts, 386 F.2d 540 (5th Cir. 1967)	9
Middleton v. Luckenbach S.S. Co., Inc., 70 F.2d 326 (2nd Cir., 1934)	14
Noel v. United Aircraft, 204 F.Supp. 929 (Del., 1962)	14
Ocean Drilling and Exploration Company v. Berry Bros. Oil Field Service, 377 F.2d 511 (5th Cir. 1967)	9
Peterson v. United New York Sandyhook Pilots Ass'n, 17 F.Supp. 676 (E.D. N.Y., 1936) ..	14
Pure Oil v. Snipes, 293 F.2d 60 (5th Cir., 1961) ..	4, 9
Rodrigue v. Aetna Casualty and Surety Co., 395 F.2d 216 (5th Cir., 1968)	5
Southern Pacific Co. v. DeValle Da Costa, 190 F.Supp. 698 (1st Cir. 1911)	18
Stewart v. Roosevelt Hotel, Inc. (App. 1965) 170 So. 681	34

TABLE OF AUTHORITIES—(Continued):

	Page
Cases—(Continued):	
Succession of Roux v. Guidry, 182 So.2d 109 (1966)	29, 32
The Alaska, 130 U.S. 201	11
The Hamilton, 207 U.S. 398	11
The Harrisburg, 119 U.S. 199	11
United States v. Gavagan, 280 F.2d 319 (5th Cir., 1960)	14
Williams v. Moran, Procter, Mueser and Rutledge, 205 F.Supp. 208 (S.D. N.Y., 1962)	14
Wilson v. Transocean Airlines, 121 F.Supp. 85 (N.D. Calif., 1954)	12
Other:	
The Admiralty Law of the Supreme Court, 1963 Ed., at Pages 99-100	16
Congressional Record—House, March 17, 1920, page 4482	35
Congressional Record—House, March 17, 1920, page 4485	30
Death Actions in Admiralty, 31 Yale Law Journal, 115 (1921)	16
Handbook of Admiralty Law in the United States, Robinson (1939) P. 140	16
Magruder and Grout, Wrongful Death within the Admiralty Jurisdiction, 35 Yale Law Journal 395, 422-3 (1926)	16



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968.

No. 436.

**PAULETTE BOUDREAUX RODRIGUE, ET AL.
AND
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,**
Petitioners,

versus

**AETNA CASUALTY AND SURETY COMPANY, ET AL.
AND
THE LINK BELT COMPANY, ET AL.,**
Respondents.

ORIGINAL BRIEF ON BEHALF OF RESPONDENTS.

MAY IT PLEASE THE COURT:

This is a joint brief filed on behalf of respondents, Rubin W. Mayronne, Jr., d/b/a Mayronne Drilling Company, Humble Oil and Refining Company and Aetna Casualty and Surety Company, in the *Paul-ette Boudreaux Rodrigue* case, and The Link Belt Company and The Road Equipment Company, Inc. in the *Ella Mae Dubois Dore* case, in substantiation of the two Fifth Circuit Court of Appeals' decisions

herein being complained of and which are consonant with the other Federal Court of Appeal's case bearing on the same subject matter, *Higa vs. Trans-Ocean Airlines*, 230 F.2d 780 (9th Cir. 1955) reh. den. (1956), writ cert. den., 352 U.S. 802, 77 S.Ct. 20 (1956).

QUESTIONS INVOLVED.

1. Does the Louisiana Wrongful Death Act, Article 2315 of the Louisiana Civil Code, apply to provide a remedy for the death of a person on a stationary platform located more than one marine league from shore on the Outer Continental Shelf?

2. Is the Louisiana Wrongful Death Act inconsistent with the Federal law applicable to deaths occurring on platforms on the Outer Continental Shelf and, accordingly, not extended under the specific terms of the Outer Continental Shelf Act?

STATEMENT OF THE CASE.

The Rodrigue Case:

The facts of this case are that three separate lawsuits were filed by the plaintiff against several defendants for the death of Mrs. Rodrigue's husband, which occurred 28 miles off the coast of Grand Isle, Louisiana. These cases were later consolidated. Prior to the trial on the merits in these cases, Aetna Casualty and Surety Co., insurer of Mayronne Drilling, brought a motion to be dismissed from

Civil Action 3109, founded upon the assertion that it could not be properly made a party defendant under the Louisiana Direct Action Statute LSA-RS 22:655, because the death did not occur within the boundaries of the State of Louisiana. The case of *Guess vs. Read*, 290 F.2d 622 (5th Cir., 1961) was cited in support of this contention. Judge West without written reasons dismissed Aetna Casualty and Surety Co. from Civil Action 3209, apparently, on the grounds that since the accident had occurred 28 miles off the coast of the State of Louisiana, the death did not occur within the State of Louisiana, and therefore the Louisiana Direct Action could not be applied to obtain jurisdiction over Aetna Casualty and Surety.

Just prior to the trial on the merits of these three consolidated cases, the defendants reurged several motions to dismiss, founded on various grounds. After hearing oral argument on all of the motions, the trial judge denied the motion of all the defendants to dismiss admiralty action #810, the Death on the High Seas claim, and granted the defendant's motion dismissing civil actions 3109 and 3298.

The trial court in dismissing civil action #3109 stated at Pages 143-44 of the trial transcript that since the death occurred more than a marine league from shore, the court did not have jurisdiction over the action.

In dismissing civil action #3298, the Honorable Gordon E. West referred extensively to the opinion of Judge Brown in *Pure Oil vs. Snipes*, 293 F.2d 60 (5th Cir., 1961) and stated:

"If we are to say as this Snipes Case did say, that Louisiana Law does not apply, then we must conclude that Article 2315 of the Louisiana Civil Code does not apply but that federal maritime law which does give a right of action for wrongful death must apply. In other words, the void is not there by saying that 2315 does not apply. It does not create a void in which the plaintiff would find herself without a cause of action; on the contrary, to hold as I am holding would carry out specifically the mandate of the Snipes Case and at the same time would not deprive the plaintiff of a right of action for wrongful death, because if we apply maritime law as Judge Brown said in the Snipes Case must be applied, then death on the high seas is the maritime law and that death on the high seas statute does provide for wrongful death and consequently, both the intent of Congress and the interpretation at least in the Snipes Case and the rights of the plaintiff are preserved and protected."

After dismissal of the two civil actions, the trial court proceeded to hear the remaining admiralty action #810 and found the defendant, Mayronne, liable and awarded a judgment to the plaintiff in the amount of \$73,000.00 together with interest and costs of \$13,750.00 which totaled some \$88,750.00.

The Fifth Circuit on appeal of the *Rodrigue* case held that the Death on the High Seas Act was the exclusive remedy for this death that occurred beyond a marine league from the shore of the State of Louisiana. See *Rodrigue vs. Aetna Casualty and Surety Co.*, 395 F.2d 216 (5th Cir., 1968).

The Dore Case:

The wife and children of Joseph Dore, deceased, instituted a Civil Action in the United States District Court, Western District of Louisiana, Lafayette Division, against The Link Belt Company, an Iowa corporation authorized to do and doing business in the State of Louisiana, and against The Road Equipment Company, Inc., which was brought in by a supplemental petition and which is a Louisiana corporation.

The plaintiffs in Article 6 of the petition alleged that Mr. Dore was killed while working on an offshore drilling rig on South Marsh Island Block 51 in the Gulf of Mexico, which Block is approximately fifty miles south of Marsh Island, when a crane, "sold, manufactured, supplied and installed by The Link Belt Company . . . collapsed and fell a distance of more than sixty feet." It is alleged in Article 11 that petitioners bring the action under "the General Maritime Laws, the Death on the High Seas Act, 46 U.S.C.A. 761, et seq., Article 2315 of the Revised Civil Code of the State of Louisiana and under the other laws of the United States and the State of Louisiana." It is alleged in Article 12 that complainants suffered pecuniary losses, expenses and

damages, including "loss of love and affection, loss of support and inheritance, loss of material aid and service, loss of parental guidance, loss of society and companionship, pain and suffering, anguish and shock totalling \$670,000.00."

Defendants, The Link Belt Company and The Road Equipment Company, filed motions to dismiss for failure of the petition to state a claim on which relief could be granted and alternatively, motions for summary judgment on the principal premise that the Death on the High Seas Act, Title 46 of the United States Code Annotated, Section 761, *et seq.*, was the exclusive remedy, if any, in the wrongful death action sought to be recognized and enforced by petitioners and, accordingly, the provisions of this Act had to be met.

The Honorable Judge Richard J. Putnam, ruled on October 26, 1966, that the Death on the High Seas Act was the only law applicable under the allegations of the petition and, accordingly, (1) the suit was removed to the admiralty side of court, (2) the administratrix of the estate of Joseph Dore for her and the minor's benefit, was the proper party plaintiff, and (3) the plaintiffs' recovery was restricted to pecuniary loss.

The Fifth Circuit Court of Appeals affirmed the trial court's decision holding that (1) the Federal Law, the Death on the High Seas Act, was to apply and, correlatively, the Louisiana State Law had no

application and (2) the Death on the High Seas Act was *inconsistent* with the Louisiana Wrongful Death Act and therefore, was the exclusive remedy.

ARGUMENT.

1. Does The Louisiana Wrongful Death Act, Article 2315 Of The Louisiana Civil Code, APPLY To Provide A Remedy For The Death Of A Person On A Stationary Platform Located More Than One Marine League From Shore On The Outer Continental Shelf?

The accidents which give rise to this dual and consolidated litigation occurred on stationary platforms which are located on the "Outer Continental Shelf" (as that term is defined in the Outer Continental Shelf Lands Act in Section 1331 of Title 43) at a distance more than one marine league from shore. Therefore, unquestionably, the Outer Continental Shelf Lands Act, 43 U.S.C. Section 1331, *et seq.* applies.

Section 1333, Division (a)(1) provides that the "Constitution and laws and civil and political jurisdiction of the United States. . ." are extended to all artificial islands located on the Outer Continental Shelf.

Division (a)(2) of the same Section provides as follows:

"To the extent that they are *applicable* and not *inconsistent* with this subchapter or with other Federal laws and regulations of the Secretary

now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953, are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf." (Emphasis supplied.)

Division (a)(2) requires as conditions precedent to the federal adoption of adjacent state laws, that the adjacent state law must *apply* to the given factual situation and that the adjacent law must not be *inconsistent* with federal laws.

The two Fifth Circuit Court of Appeals' cases herein complained of by petitioners held (and so admitted by petitioners throughout) that the Death on the High Seas Act was the applicable Federal Law to a death occurring on a stationary platform more than one marine league from shore.

The issue then focused is: If the Death on the High Seas Act applies to a death under the factual situation here presented, does the adjacent state law apply? The Fifth Circuit Court of Appeals in both of these cases held that the State Law did not apply on two principal bases.

First, the consistent federal maritime jurisprudence is to the effect that the State Law will not apply to personal injury litigation which occurs on stationary platforms on the "Outer Continental Shelf", citing *Loffland Brothers Company vs. Roberts*, 386 F.2d 540 (5th Cir. 1967) writ of cert. den. (1968); *Ocean Drilling and Exploration Company vs. Berry Bros. Oil Field Service*, 377 F.2d 511 (5th Cir. 1967) and *Pure Oil Company vs. Snipes*, 293 F.2d 60 (5th Cir. 1961).

In the *Pure Oil Company vs. Snipes*, *supra* decision, the Fifth Circuit Court of Appeals stated on Page 64:

"In every sense of the word this happened on the high seas. It did not happen in Louisiana. Nor did it happen in waters which Louisiana could regard as within her territorial boundaries. . . .

"We think that a consideration of both intrinsic and extrinsic factors requires the conclusion that it was the intention of Congress that (a) this occurrence be governed by Federal, not State law, and (b) that the Federal law thereby promulgated would be the pervasive maritime law of the United States. In connection with the latter phase

—the choice by Congress of maritime law—it is again important to keep in mind that we are in an area in which Congress has an almost unlimited power to determine what standards shall comprise the Federal law.”

The concept that once the Federal Congress has pre-empted legislatively a subject matter does not, allow for the application of State Law, is embodied in the United States Supreme Court decision of *Gillespie vs. United States Steel Corporation*, 379 U.S. 150, 85 S.Ct. 308 (1964), in which Justice Black, as the organ of the Court, held that in a death accident occurring within Ohio's territorial waters, the Jones Act provided the only remedy to the decedent's survivors to the exclusion of the Ohio Wrongful Death Action, by which the personal representative attempted to establish unseaworthiness of the vessel.

Secondly, the Fifth Circuit Court of Appeals in the *Dore* decision, held that the Louisiana State Law did not apply because the Death on the High Seas Act was meant to be a remedy for deaths occurring on the high seas to the exclusion of State Laws.

The Honorable Harrington Putnam of the Supreme Court of the State of New York, who was the author of the Death on the High Seas Bill, ruled as follows in introducing the bill to the House:

“The general purpose of the measure is to give a uniform right of action in the United States

Admiralty Courts for death by negligent acts occurring on high seas, or on navigable waters of the United States, including the Great Lakes. The common law of England and in this country had no right of action for death, the reason for this omission being commonly stated that such a right was personal which did not survive the death of the one injured. This was remedied by Lord Campbell's Act and following it our states have passed statutes conferring certain remedies for death. Congress also has changed the common law in this respect for the District of Columbia."

* * * * *

"In this country a series of decisions by the Supreme Court of the United States has held that there is no recovery for death at sea, in the absence of a statute conferring such a remedy. (*The Harrisburg*, 119 U.S. 199; *The Alaska*, 130 U.S. 201).

"In another limited liability proceeding arising from a collision more than three miles from land between steamships both owned by Delaware corporations, the Death Statute of Delaware was applied. (*The Hamilton*, 207 U.S. 398). These state statutes however are far from uniform."

* * * * *

"Although the constitutional grant of all cases of admiralty and maritime jurisdiction, with the power to regulate commerce, was intended to secure uniformity throughout the country, the Su-

preme Court has suffered this anomalous condition to grow up on the permissive theory that until Congress acts a state can legislate at least to the extent of binding corporations which it has created so that these statutes may extend to torts committed more than three miles from land.

"Such state statutes, diverse in their terms in conflicting of remedies are but a poor mixture for the uniform, simple legislation which Congress alone can enact.

"The present bill is designed to remedy this situation by giving a right of action for death, to be enforced in the Courts of Admiralty, both in rem and in persona."

See Sixty-Sixth Congress, Second Session, House of Representatives, Report Number 674, dated February 25, 1920, entitled "Actions for Death on the High Seas."

It is clear that the enactment of the death on the high seas act was an act on the part of Congress in order to bring uniformity in the maritime field in regards to death more than a marine league from State boundaries, and necessarily superseded the application of the death statutes of the several states which then provided various remedies for such wrongful deaths.

In *Wilson vs. Transocean Airlines*, 121 F.Supp. 85 (N.D. Calif., 1954) Judge Goodman, in a lengthy discussion of the exact question presented to this court states at Page 90 that:

"The death on the high seas act was prompted, in large part, by the desire to put an end to the uncertainty attending the application of state statutes to deaths on the high seas. Many of these uncertainties would remain to plague both courts and litigants if the state statutes could still be availed of by suitors. In addition, since the death on the high seas act was drawn with the purpose to afford an exclusive, uniform federal right of action for death on the high seas, the right of action which it created is not appropriate to serve as a mere supplement to state-created rights of action on the high seas.

"Moreover, any attempt to apply a state wrongful death statute to a death occurring on the high seas, would, today, raise a serious constitutional question. For decisions of the Supreme Court subsequent to its decision in the *Hamilton*, *Supra*, in 1907, have cast doubt on the continued vitality of the holding in that case that a state has power to create a right of action for death on the high seas."

In *Jennings vs. Goodyear Aircraft Corporation*, 227 F.Supp. 246 (Del. 1964), the Court held that:

"The *Hamilton* is representative of the legal chaos existing prior to the passage of the act. Application of a state wrongful death act to deaths occurring on the high seas would defeat the very uniformity which congress sought to

promote and would today raise serious constitutional issues."

See also the cases of *Igneri vs. CIE de Transport Oceaniques*, 323 Fed. 2d 257 (2nd Cir., 1963); *Peterson vs. United New York Sandyhook Pilots Ass'n*, 17 F.Supp. 676 (E.D. N.Y., 1936); *First National Bank in Greenwich vs. National Airlines, Inc.*, 171 F.Supp. 528 (S.D. N.Y., 1958), Cert. den. 368 U.S. 859, 82 S.Ct. 102, 7 L. Ed. 2d 57, Affirmed 288 Fed. 2d 621; *Blumenthal vs. United States*, 189 F.Supp. 445 (E.D. Penn., 1960), Affirmed 306 F.2d 16; *Middleton vs. Luckenbach S.S. Co., Inc.*, 70 F.2d 326 (2nd Cir., 1934); *Williams vs. Moran, Procter, Mueser and Rutledge*, 205 F.Supp. 208 (S.D. N.Y., 1962); *Noel vs. United Aircraft*, 204 F.Supp. 929 (Del., 1962); *D'aleman vs. Pan American World Airways*, 259 F.2d 493 (2nd Cir., 1958), concurring opinion of Judge Waterman, Page 496; *Cunningham vs. Bethlehem Steel Co.*, 231 F.Supp. 934 (S.D. N.Y., 1964); *United States vs. Gavtigan*, 280 F.2d 319 (5th Cir., 1960); *King vs. Pan American World Airways*, 166 F.Supp. 136, Affirmed 270 F.2d 355, Cert. den. 362 U.S. 928, 4 L. Ed. S. 746; *Canillas vs. Joseph H. Carter, Inc.*, 280 F.Supp. 934 (S.D. N.Y., 1968).

In *Higa vs. Transocean Airlines*, 230 F.2d 780 (9th Cir. 1955), the Ninth Circuit Court of Appeals held that the Death on the High Seas Act was the exclusive remedy and that the Court's sole jurisdiction was in admiralty, where the plaintiff attempted to assert the Hawaiian Wrongful Death Act to a death

which had occurred on the high seas. In that case the Court stated as follows on Page 785:

"Here, however, the Death on the High Seas Act creates the right to recover for wrongful death and designates not only the federal court for its enforcement, but a particular jurisdiction of that court. The right is a matter of federal law where state courts would have no special competence. There is more here than 'the grant of jurisdiction, of itself * * *' which indicates that jurisdiction was intended to be exclusive."

The United States Supreme Court denied writs of certiorari 352 U.S. 802, 77 S.Ct. 20 (1956).

Not only have the majority of the courts held that a death which occurs more than a marine league from a state is *exclusively* under the Federal Death on the High Seas Act, but so also have the majority of the legal writers in the maritime field. In Gilmore and Black, *The Law of Admiralty*, 1957 Ed., at Page 308, the authors in discussing recovery for death, state:

"The high seas act provides only for recovery for death caused by wrongful act, neglect or default by way of a suit for damages in admiralty for the exclusive benefit of the listed beneficiaries; it further specifies that the recovery in such suits shall be a fair and just compensation for the pecuniary loss suffered by the persons for whose benefit this suit is brought. The

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high seas act and the Jones Act, incorporating FELA, were passed almost at the same time; it is a reasonable assumption that the failure of congress to provide specifically in the High Seas Act for the double recovery must have been deliberate and that only pecuniary loss to the beneficiaries was meant to be recoverable." (Emphasis added.)

In the work by Mr. Baer, *The Admiralty Law of the Supreme Court*, 1963 Ed., at Pages 99-100 we find the following discussion in regard to the exclusiveness of the death on the high seas act.

"But, with the passage of the death of the high seas act, the state wrongful death acts were inoperative as to the deaths caused on the high seas beyond a marine league from the shore of any state." (Emphasis added.)

See also Hughes, *Death Actions in Admiralty*, 31 Yale Law Journal, 115 (1921); Magruder and Grout, *Wrongful Death within the Admiralty Jurisdiction*, 35 Yale Law Journal 395, 422-3 (1926); *Handbook of Admiralty Law in the United States*; Robinson (1939) P. 140.

The petitioners herein in their brief have attempted to show by legislative history of the Death on the High Seas Act, that the legislators intended by Section 767 to provide that Act with a complementary remedy by the incorporation of state wrongful death actions. The same specious argument was

asserted and rejected by the Federal Ninth Circuit Court of Appeals in the *Higa, supra* decision, on the correct basis that the legislators did not know what they were doing in drafting Section 767 and that at best they intended to preserve to suitors jurisdiction in state courts to pursue state remedies in those peculiar instances presented in the cases cited by Mr. Mann. One of the cases cited by Mr. Mann was the *E. B. Ward, Jr.*, 17 F. 456 (Cir. Ct. E. D. La. 1883), in which the accident occurred as a result of a collision between a Swedish vessel and the Steamship *E. B. Ward, Jr.* on the high seas. The *E. B. Ward, Jr.* was owned by Louisiana citizens and her home port was the Port of New Orleans. The Circuit Court, first stated that under General Maritime Law, there was no action for wrongful death even in those instances involving seamen; however, natural equity and reason dictated that a wrongful death action should be provided to seamen and if there was any way of adopting state law, this should be done. The Court then used the argument that since the vessel was registered under the Flag of the State of Louisiana, that the vessel, *E. B. Ward, Jr.*, which was the offending vessel, was "part of the territory" of the State of Louisiana and, the State Law of Louisiana would be applied to provide a remedy. Another case cited by Mr. Mann was *The Harrisburg*, 119 U.S. 211 (1886), in which the United States Supreme Court overruled the *E. B. Ward, Jr.*, *supra*, and stated that the General Maritime Law did not provide a remedy for wrongful death. Another case is *Southern Pacific Co. vs. De-*

Valle Da Costa, 190 F. Supp. 698 (1st Cir. 1911), in which the survivors of the decedent, a Portuguese seaman killed as a result of an accident while in his employment on the vessel *DeValle*, which was owned by Southern Pacific Company, a corporation of the State of Kentucky, instituted an action in Federal Court attempting to apply the Wrongful Death Statute of Kentucky, the place of incorporation of the defendant. The Court of Appeals there applied the Kentucky State Statute as the law applicable to the regulation of the obligations of the offending vessel. See also *International Navigation Co. vs. Lindscomb*, 123 F. 475 (2nd Cir. 1903), in which again the law of the state flag of the offending vessel was adopted by General Maritime Law to provide a wrongful death remedy.

But, what is more important is that the Congressional Record found in Volume 59 of the Sixty-Sixth Congress, Second Session (1920), shows that the legislators in their discussion, explicitly set forth the unequivocal intention that under no circumstances were the State Court rights and remedies to be complementary—on the contrary, the state rights and remedies were to be exclusive in the state forum and the federal laws exclusive in the federal forum.

"The courts may take the view that as the bill deals with accidents on the high seas and also with accidents within the territorial limits of the States, then even as to causes of action

arising on the high seas the admiralty courts and State courts are to have concurrent jurisdiction. If that view is to be avoided, it strikes me that there could be placed easily in the first section of the bill language that would place the point beyond peradventure of a doubt. I have only seen the bill in the last few moments, and am only stating an impression.

"Mr. MONTAGUE. May I suggest—

"Mr. VOLSTEAD. I yield to the gentleman.

"Mr. MONTAGUE. In reply to the statement of my colleague (Mr. Moore) I will say that jurisdiction upon this subject is found in the Constitution of the United States, and it has been held over and over again by our courts that when the Congress legislates in pursuance of constitutional authority such a law is exclusive. It requires no asservation in the bill to make it exclusive. It is exclusive by virtue of its superior jurisdiction; therefore, I submit, it is needless to amend this bill now and raise the chance of its defeat by adding a mere adjective when by the very force of the Constitution and the law in pursuance thereof it is inherently and necessarily exclusive." (Page 4483.)

* * * * *

"Mr. SANDERS of Indiana. The thing that occurred to me is this: Now, here is a statute providing for an action in admiralty for the decedent. It provides just how the amount re-

covered shall be distributed and it provides for certain beneficiaries. On the other hand, in section 7, you provide it shall not interfere with the laws of any State. If some State had a law providing for the recovery for wrongful death and entirely different distribution and we enact this statute and say the first statute shall not interfere with the law, you have two rights, first, within the first provisions of this act and then under the State, by the other beneficiaries, and it would subject the person charged to two suits." (Page 4484.)

"Mr. SANDERS of Indiana. I would like to know what the effect of this law would be if the amendment offered by the gentleman from Illinois (Mr. Mann) be adopted with reference to this particular question: As thus amended, the first sentence in section 7 will read, 'That the provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this act.' Now, as I understand it, if a person living in Illinois should be in the beneficiary class, should be, say, the widow of a person who had been killed on the high seas, that person may now bring action in personam in the State court of Illinois, and the damages recovered shall then be distributed in accordance with the provisions of the State statutes. Now, if this act is passed as thus amended, it will give that widow the right to elect as to

whether she shall proceed under the terms of the act conferring jurisdiction upon the Federal courts with reference to this matter, or whether she shall proceed under the State statute of Illinois. Is that the gentleman's understanding?

"Mr. VOLSTEAD. That is my view of it, and my understanding is that in the form in which the bill at one time was drawn there was a provision something like this, and there was a precautionary clause added to prevent a double action; that is, to prevent action first in the State court and then afterwards an action in the Federal court.

"Mr. SANDERS of Indiana. The reason I raised the question is that you notice here that the action is for the benefit of the husband, parent, or child. My recollection of the action for wrongful death in Illinois is that the child precedes the parent in the beneficial interest. It seems to me this might give conflicting rights. If the right of action were in one person in either case, then, of course, having elected to proceed under one provision, he would be barred from proceeding under the other provision. But suppose that the parent had the right to proceed in admiralty in the Federal courts under this law, and suppose under the State law of Illinois the child had the right to proceed. Now, how are you going to have an election in that case when the right to elect is not in the same person?" (Page 4485.)

* * * * *

"Mr. MANN of Illinois. Mr. Speaker, would the gentleman yield for the purpose of offering an amendment—

"Mr. WOLSTEAD. I yield for that purpose.

"Mr. MANN of Illinois. In order to get it before the House for consideration I move to strike out page 3, line 12, after the word 'act,' the words 'as to causes of action accruing within the territorial limits of any State.'

"The SPEAKER pro tempore. The gentleman, from Illinois offers an amendment, which the Clerk will report.

"The Clerk read as follows:

"Amendment offered by Mr. MANN of Illinois: Page 3, line 12, after the word 'act,' strike out 'as to causes of action accruing within the territorial limits of any State.'

"Mr. MANN of Illinois. Now, I do not know whether I am right or wrong about it, because I have not examined the report on this bill carefully as reported this time. But I remember this bill very distinctly in previous Congresses, and my impression, which very likely may be erroneous, is that the purpose of the bill was to confer jurisdiction in certain cases of death where no jurisdiction now exists. I was under the impression that the bill was not intended to take away any jurisdiction which can now be exercised by any State court. I may be wrong about

that. I notice in the report in one place, on page 2, this statement from somebody:

"We are very anxious to have the bill go through in its present simple form, which avoids conflict with State statutes and yet remedies a crying defect in the maritime law as administered in this country—and so forth.

"If the amendment which I have suggested should be agreed to, the bill would not interfere in any way with rights now granted by any State statute, whether the cause of action accrued within the territorial limits of the State or not. In other words, if a man had cause of action and could get service, he could sue in a State court and not be required to bring suit in the Federal court." (Page 4484.)

* * * * *

The attorneys for petitioners herein by omitting the above quotations in their presentation, have attempted to ascribe different meanings to Section 767 than the meaning intended by the redactors of the statute to the effect that the state court, the laws of which then provided a remedy under the peculiar circumstances cited in those cases cited by Mr. Mann, would have exclusive jurisdiction if the suit were instituted in the State forum to pursue state law remedies, whereas if the suitor elected to sue in the federal forum, this would be exclusive of any state action and the federal law would be applied exclusively.

In summary, it is submitted to the Court that the dispositive Federal Law embodied in the Death on the High Seas Act is the law applicable to provide a remedy for death occurring on platforms on the "Outer Continental Shelf" by incorporation in the Outer Continental Shelf Lands Act and, accordingly, the adjacent state law does not apply.

Alternatively, it is submitted to the Court that if the Death on the High Seas Act is not the exclusive remedy for suitors, Section 767 should be applied as intended by the redactors in saving to suitors an *alternate* route in a proceeding in a state court to enforce a state remedy for wrongful death in those instances exemplified by the cases cited by Mr. Mann where the State Law was applied to enforce the obligations of an offending vessel which was registered in the State or owned by state citizens. This admittedly would lead to absurd situations and the absurdity is what convinced the two Fifth Circuit Court of Appeal panels in the instances at bar and the Ninth Circuit Court of Appeals in the *Higa* decision to provide that the Death on the High Seas Act is the exclusive remedy.

For example, in the *Dore* case at bar, conceivably there are three state wrongful death laws which would control the obligations of the possible tort-feasors, Iowa as the State of incorporation of The Link Belt Company, the Louisiana Wrongful Death Action, as the State of incorporation of the Road Equipment Company, and Delaware, as the State of

incorporation of Shell Oil Company, which has now been made a party; this would mean that the three wrongful death state laws with its divergent and conflicting provisions, would apply to determine the obligations owed by each of the possible tort-feasors.

2. Is The Louisiana Wrongful Death Act Inconsistent With The Federal Law Applicable To Deaths Occurring On Platforms On The Outer Continental Shelf And, Accordingly, Not Incorporated Under The Specific Terms Of The Outer Continental Shelf Act?

As we have mentioned, the outer Continental Shelf Act and specifically 43 U.S.C. Section 1333 (a)(1), makes applicable to a platform, the Death on the High Seas Act. The law of the adjoining state (if such has been determined by Executive projection of State lines) is incorporated where "applicable and not inconsistent . . . with other federal laws". We have covered in the first part of this brief the question of the alleged applicability of Article 2315 of the Louisiana Civil Code; and now we would like to direct your consideration to the second question, i.e. is the Louisiana Death Statute inconsistent with the Death on the High Seas Act.

As indicated, this question must be answered because of the very terms of the outer Continental Shelf Act. Title 43 U.S.C. Section 1333 (a)(1) extends the Death on the High Seas Act, a federal statute, to the platform, without qualifications:

"(a)(1) The constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon. . . ."

On the other hand, the adjoining state law is only extended if it fulfills two (2) important qualifications. See 43 U.S.C. 1333 (2).

"(2) To the extent that they are *applicable and not inconsistent* with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. . . ."

This last determination of consistency or inconsistency is our present consideration.

A review of the decision of the Fifth Circuit in *Dore, et al. v. Link Belt Co., et al.*, 391 F.2d 671 (1968), will show a determination was made on the consistency of the Federal and State Act. Judge Ainsworth, a man trained in Louisiana law, as is the district judge, Richard J. Putnam, found glaring inconsistencies between the Death on the High Seas Act and Article 2315 of the Louisiana Civil Code. The Fifth Circuit used the following language in making this finding:

"Appellants contend that the language of the outer Continental Shelf Lands Act which makes applicable the laws of the adjacent state under certain circumstances requires an interpretation that the law of Louisiana is applicable."

Necessarily, Louisiana law must not be inconsistent with federal law to warrant this interpretation. Several inconsistencies between federal law and the law of Louisiana are apparent; for example, the law of Louisiana, which provides *inter alia* for broad remedies for wrongful death, such as loss of love and affection, etc., limits the time to one year within which an action may be brought and bars recovery because of contributory negligence. In contrast, the provisions of the Death on the High Seas Act provide for pecuniary loss only, a two-year period in which an action may be brought and bars recovery because of contributory negligence. In contrast, the provisions of the Death on the High Seas Act provide for pecuniary loss only, a two-year period

in which an action may be brought, and mere diminution of damages in the event of comparative negligence."

In support of this finding, the Court likewise discussed, as have we, the exclusive nature of the Death on the High Seas Act, and found that Article 2315 of the Louisiana Civil Code failed to meet both requirements of the Outer Continental Shelf Lands Act. However, in amplification of the finding of inconsistency and for Your Honors' convenience, we discuss each potential inconsistency separately.

Proper Party Plaintiff And/Or Party In Interest.

As Your Honors are aware, Title 46 Section 761, requires that action for Death on the High Seas be brought by the "personal representative of the decedent for the exclusive benefit of decedent's wife, husband, parent, child, children or dependent relative". With this language, we reach our first inconsistency. The pertinent portion of Article 2315 of the Louisiana Civil Code states that damages for wrongful death can be recovered:

"In favor of: (1) the surviving spouse and child or children of the decedent, or either such spouse or such child or children;

(2) The surviving father and mother of the decedent or either of them, if he left no spouse or children surviving; and

(3) The surviving brothers and sisters of the decedent, or any of them, if he left no spouse, child or parent surviving."

The classifications set out by Article 2315 of the Louisiana Civil Code above, are given in order of preference in recovery. If there is a surviving spouse and child or children, then the father and mother of the deceased have no recovery. Likewise, if the father and mother are alive and there is no spouse or surviving child, then the surviving brothers and sisters of the deceased have no right or cause of action. Additionally, the question of dependency is of no importance in extending the right or cause of action to a survivor; but is only considered in reference to the extent of damage or injury done to a named survivor. Thus, it is apparent that we immediately have a conflict between the named survivors or classification of individuals on whose behalf damages may be recovered.

Additionally, we also note the requirement under the Death on the High Seas Act that the personal representative "maintained" the suit for damages. On the other hand, Article 2315 of Louisiana Civil Code requires the individual survivor to bring the action personally and the personal representative of the decedent cannot maintain the suit. See *Succession of Roux v. Guidry*, 182 So.2d 109 (1966).

Before closing this particular phase of the inconsistency, we might note that Congress itself recog-

nized these potential inconsistencies between the Death on the High Seas Act and various state death acts. In this connection we note the language of Mr. Sanders in his conversation with Mr. Volstead. See *Congressional Record—House*, March 17, 1920, page 4485.

"Mr. SANDERS of Indiana. The reason I raised the question is that you notice here that the action is for the benefit of the husband, parent, or child. My recollection of the action for wrongful death in Illinois is that the child precedes the parent in the beneficial interest. It seems to me this might give conflicting rights. If the right of action were in one person in either case, then, of course, having elected to proceed under one provision, he would be barred from proceeding under the other provision. But suppose that the present had the the right to proceed in admiralty in the Federal courts under this law, and suppose under the State law of Illinois the child had the right to proceed. Now, how are you going to have an election in that case when the right to elect is not in the same person?" (Emphasis supplied.)

Elements Of Damage.

In this connection, the death on the high seas clearly grants recovery only for pecuniary loss. See Title 46 U.S.C. Section 761. The Legislative history likewise shows that the term "pecuniary loss" was added in subsequent to Putnam's original letter which is quoted in its entirety in the House Report

No. 674 dated February 25, 1920, entitled "Actions for Death on the High Seas", Sixty-sixth Congress, Second Session, House of Representatives. Your Honors will note that Putnam, who was the author of the bill, had originally proposed the concept of quantum recovery as "fair and just compensation for the loss sustained by the survivors". Subsequent to this original proposal by Putnam, the bill was amended to restrict the phrase "fair and just compensation" to the "pecuniary loss" sustained by the survivors. See Section 762 of the Death on the High Seas Act. It, therefore, shows a Congressional intent to limit the recovery to pecuniary loss of the parties. On the other hand, as stated by the Fifth Circuit, the Louisiana Death Statute "provides inter alia for broad remedies for wrongful death, such as loss of love and affection, etc. . . ." This broad remedy would appear to be in conflict with the intent of Congress which apparently considered the unlimited type recovery and thereafter limited it by placing in the statute the term "pecuniary loss".

Delay For Filing Suit.

The death on the high seas grants a two (2) year limitation with a possible extension of ninety (90) days "after a reasonable opportunity to secure jurisdiction has offered". See Title 46 Section 763. On the other hand, the Louisiana Death Statute, Article 2315, has "built into it" a pre-emptive period of one (1) year. If the action is not exercised within one (1) year from death, the Louisiana.

courts have stated it is not merely descriptive but, on the contrary, that it is pre-emptive in nature and the entire cause of action is destroyed. See *Succession of Roux v. Guidry*, 182 So.2d 109 (1966). Your Honors will also note that in the Roux case, *supra*, that the Louisiana Court also concluded that a suit filed by the Executor of the estate of the decedent, did not prevent the running of the pre-emptive period; but on the contrary, a suit by the specifically named survivors must be instituted prior to the one (1) year period. The Death on the High Seas Bill, as originally proposed by Putnam (House Report 674, *supra*) provided for a one (1) year statute of limitation but this provision was subsequently amended to provide for the two (2) year statute.

Thus, another apparent inconsistency with the Congressional intent.

Defenses.

The Death on the High Seas Act clearly makes inapplicable, the concept of contributory negligence as a bar to recovery. See Title 46 U.S.C. Section 766. Likewise, the concept of comparative negligence set forth by this section would appear, under the Court's decisions, to bar the defense of assumption of risk under all but the most unusual circumstances. On the other hand, under Article 2315 of the Louisiana Civil Code, the concept of contributory negligence and assumption of risk is re-

tained and bars all recovery of the plaintiffs. See *Curd v. Todd-Johnson Dry Docks*, 213 F.2d 864 (App. 1954); see *Frisard v. Oalmann*, (App. 1965), 175 So.2d 407; see *Lee v. Peerless Insurance Company*, (1966), 248 La. 982, 183 So.2d 328, on the concept of contributory negligence; and see *Fradger v. Shaffer-Stein Corp.*, (App. 1954), 73 So.2d 612 on the concept of assumption of risk.

Thus, if Article 2315 is applied, we will be faced with the anomalous situation of two different standards being applied to the different elements of recovery.

Contribution And/Or Tort Indemnity Between Joint Tort Feasors.

As Your Honors are aware, the right of contribution between joint tort feasors has been denied in Admiralty Courts. See *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*, (1952), 342 U.S. 282, 72 S.Ct. 277. Likewise, tort indemnity has been denied in the Maritime jurisdictions. See *Brown & American Hawaiian S.S. Co.*, 211 F.2d 16, 18 (3 Cir. 1954). This, however, has not been true under Article 2315 of the Louisiana Civil Code. Article 2315 carries with it the concept of solidary obligation of Louisiana law and our Codal Articles and jurisprudence clearly recognize the right of contribution between joint tort feasors. See *Danks v. Maher*, (App. 1965), 177 So.2d 412. Moreover, the Supreme Court of Louisiana has recently introduced or recognized the concept

of tort indemnity. See *Stewart v. Roosevelt Hotel, Inc.*, (App. 1965), 170 So. 681.

It would likewise appear that these concepts of contribution between joint tort feasons would also introduce into the Admiralty Court problems of credit in the event of release of one tort feason. In the case of *Harvey v. Travelers Insurance Company*, (1964), 163 So.2d 915, which has been upheld on numerous occasions since, the Court allowed a credit for one-half (1/2) of the judgment rendered, as a result of a prior release of another joint tort feason. The amount paid by the released joint tort feason was not a full one-half (1/2) of the judgment.

It would thus appear there are clear conflicts between the substantive rights of tort feasons under Louisiana Tort Law of Article 2315 and the Death on the High Seas Act.

Use Of The Jury.

Under Article 2315 the jury is an appropriate fact finder for a consideration of tort liability. However, it is clear under the Death on the High Seas Act that the maritime jurisdiction, in which the jury is not recognized, is the appropriate forum. See Title 46 U.S.C. Section 761. This conflict and the consideration of possible application of the jury in a death on the high seas case, was considered by Congress but rejected. See *Congressional Record—House*, March 17, 1920, page 4482.

"Mr. IGOE. Does not the gentleman think that he should inform the gentleman from Ohio (Mr. Ricketts) that this proceeding will be in admiralty and that there will be no jury, so that no Member of the House may have any misunderstanding about it? That question was thrashed out and it was decided best not to incorporate into this bill a jury trial because of the difficulties in admiralty proceedings. . . ."

Thus, Congress itself recognized and articulated this inconsistency.

CONCLUSION.

1. The Outer Continental Shelf Act provides in Section 1333 (a)(1) that Federal law shall apply on platforms located on the Outer Continental Shelf; Section 1333 (a)(2) provides that State law may be incorporated only if applicable. Since there is a dispositive Federal law which governs death accidents on platforms on the Outer Continental Shelf and which is exclusive, the Death on the High Seas Act, State wrongful Death remedies may not be applied;

2. The Outer Continental Shelf Act further provides in Section 1333 (a)(2) that even if the law of the adjacent State is applicable, it will not be incorporated to provide a remedy on the Outer Continental Shelf if the law of the adjacent state is inconsistent with existing Federal law. The Louisiana Wrongful Death Act, Article 2315 of the Louisiana Civil Code, is patently inconsistent with the Death on the High Seas Act, e.g. proper party plaintiffs and/or parties in interest, elements of damage, delay for filing suit, defenses, contribution and/or tort indemnity and use of juries; accordingly, the Louisiana law cannot be applied in the cases at bar under the limitation provisions of the Outer Continental Shelf Act.

3. The decisions of the two Federal Fifth Circuit Court of Appeals cases that the Death on the High Seas Act as incorporated by the Outer Con-

tinental Shelf Act is the exclusive remedy in an admiralty proceeding should be affirmed.

Respectfully submitted,

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CERTIFICATE.

This is to certify that I have this day mailed a copy of the above and foregoing Original Brief on Behalf of Respondents to Mr. A. Deutsche O'Neal, Mr. Philip E. Henderson and Mr. Charles J. Hanemann, Jr., P. O. Box 590, O'Neal Building, Houma, Louisiana, Mr. George Arceneaux, Jr., 311 Goode Street, Houma, Louisiana, and to Mr. Alfred S. Landry, Landry, Watkins, Cousin and Bonin, 211 East Main Street, New Iberia, Louisiana.

January . . . , 1969.

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H. LEE LEONARD.

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October Term, 1968.

No. 436

**PAULETTE BOUDREAUX RODRIGUE, ET AL.,
and
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,**

versus

**AETNA CASUALTY AND SURETY COMPANY, ET AL.,
and
THE LINK BELT COMPANY, ET AL.,
Respondents.**

**REPLY BRIEF FILED ON BEHALF OF PETITIONERS,
PAULETTE BOUDREAUX RODRIGUE, ET AL.,
AND ELLA MAE DUBOIS DORE, INDIVIDUALLY,
ETC.**

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MAY IT PLEASE THE COURT: :

Respondents, in their brief, contend that because the Death on the High Seas Act is available for recovery of pecuniary losses for death, the state law could not apply. These arguments in respondents' brief are based upon a false assumption which begs the question at issue.

Respondents assume that if one vehicle of recovery is available, then no other vehicle of recovery can be available. Under respondents' assumption, if the law were such that a person would be entitled to a remedy under the laws of contract for, say, damage to his personal property, then there could be no law which would concurrently allow him a remedy under tort principles for the same incident. Similarly, under respondents' assumption, if a remedy were possible under a warranty of seaworthiness, then a Jones Act remedy would be impossible, or similarly, if some portion of a redress could be obtained by way of an award for maintenance and cure, then no laws allowing recompense of damages would apply. This assumption is patently false. Because one set of laws does apply does not mean that another set does not also apply.

The same fallacy is present in respondents' contention that because the Death on the High Seas Act is not identical with the State Death Act, the two acts are "inconsistent with" each other. Respondents assume that in the pertinent provision of the Outer Continental Shelf Lands Act, 43 U.S.C. 1333 (a) (2), the word "inconsistent" means "not identical in every detail". According to this assumption, that provision of the Outer Continental Shelf Lands Act which expressly provides that the law of the adjacent state is to be extended would be meaningless, vain and useless because no state law could be extended, i.e., any state law which would not coincide precisely with the federal law already in existence would be "inconsistent" with the federal law.

Obviously the word inconsistent means "in conflict with". To give any effect to the pertinent provision of the Outer Continental Shelf Lands Act, the state law must apply to *supplement* the federal law. Law that supplements federal law is not inconsistent with the federal law simply because its *extent* and provisions are not precisely the same as the federal law—otherwise the state law could not supplement the federal law.

Thus, it is not correct to say that a remedy in tort is inconsistent with a remedy in contract or quasi contract or that a remedy under maintenance and cure is inconsistent with a remedy for damages for the same accident or that unseaworthiness is inconsistent with a Jones Act remedy. On the contrary, the law is clear that plaintiffs may pick and choose among their remedies so long as they can bring themselves within the "terms" of the statute or law upon which they rely. The tort remedy and the contract remedy are not "conflicting" or "inconsistent" with each other simply because they are both available and the measure of damages, right to attorney fees and statute of limitation, etc. are different.

Thus, with the realization that there is nothing prohibitive or unusual in having two routes to arrive at a single destination, the *sine qua non* upon which is based respondents' argument in connection with which they list the differences in the remedy under state law and the remedy under federal law, is done away with. If a plaintiff can bring himself within the provisions of the state law, i.e., suing within its delay rather than

waiting for a delay under some other law and if the right party¹ brings the suit pursuant to the state action and if there is no contributory negligence, etc., then he will be entitled to his remedy under state law, despite the fact that he may also have a remedy under federal law.

Moreover, as to the remedy for the non pecuniary damages for wrongful death which is the issue here, there is no federal law which the state action can be inconsistent with! Surely and clearly—without any doubt—the state law was, by the Outer Continental Shelf Lands Act, meant to supplement the federal law and at least fill voids. There being no federal remedy (nor any federal prohibition) whatsoever for collecting the *non pecuniary* losses in wrongful death actions, the state law clearly is to supplement the federal law at least as to those losses. Thus, even if, arguendo, respondents' contentions that the Death on the High Seas Act as an exclusive remedy would prevail, it would still not prevent the Outer Continental Shelf Lands Act from supplementing the existing law and allowing a remedy, if al-

¹ Respondents attempt to make an issue of the contention that in a given case a potential plaintiff, e.g. a surviving non-dependent brother or sister when there is no spouse, descendants or parents, may have a cause of action under the state law but none under the federal law. That such a plaintiff is given a cause of action for such damages as he sustained does no harm. The categories of potential plaintiffs under the Death on the High Seas Act are not the same as under the Jones Act, yet no injustice is done when a plaintiff recovers his damages under the Death on the High Seas Act when he could not have under the Jones Act. See e.g. *The Four Sisters*, 75 F. Supp. 802, 1947 A.M.C. 1623 and see the discussion in Gilmore & Black, *The Law of Admiralty*, 304 (1957).

lowed by the state law of the adjacent state, for the non pecuniary losses.

PRINCIPAL CASES RELIED ON BY RESPONDENTS.

The only two circuit court cases quoted from by respondents in their brief are *Higa v. Transocean Airlines*, 230 F.2d 780 (Ninth Cir. 1955) and *Pure Oil Company v. Snipes*, 293 F.2d 60 (Fifth Cir. 1961). Both of these cases are clearly distinguishable from the instant case and present no true authority for respondents' arguments.

In *Higa vs. Transocean Airlines*, 230 F.2d 780 (1965) cert. den. 352 U.S. 802, a plane on its way to Hawaii crashed in the high seas and caused the death of Higa. Higa had been a citizen of Hawaii. His administrators brought suit seeking recovery under the Death on the High Seas Act and also recovery under the Hawaiian wrongful death statute. The Court took special note that the plane had been owned not by an Hawaiian corporation but by a California corporation. The Court dismissed the action based on the Hawaiian Code because "there is no provision of that Code or decisions of the Hawaiian Courts making it applicable to death on the high seas beyond the territorial waters" 230 F.2d at 781. This language is most favorable to petitioners in the instant cases inasmuch as there is a provision of law, the Outer Continental Shelf Lands Act specifically applying the Louisiana Death Act to the locality where the death occurred and there is a decision, *The E. B. Ward, Jr.*, 17 Fed.

456, applying the Louisiana Death Act to death on the high seas.

In *Higa* the Court ruled that the Death on the High Seas Act did not in any way preempt or disturb or otherwise affect any existing other death remedies. The Court, in that connection, reviewed the legislative history of the Death on the High Seas Act and stated that Section 767 of the Act entitled "Exceptions from operation of this chapter" (which section provides "the provision of any state statute giving or regulating rights of action or remedies for death shall not be affected by this chapter") meant precisely what it said and that the legislator most responsible for the act no doubt had in mind preserving and leaving unaffected those causes of action allowed by the state death act. The Court cited some of the cases already on the books at the time of the passage of the Death on the High Seas Act which had allowed recovery pursuant to state death acts for deaths occurring on the high seas and noted that the legislator no doubt had those cases in mind. Among those cases the Court listed the heretofore referred to Louisiana case, *The E. B. Ward, Jr.*, 17 Fed. 456. The Court ruled:

"In considering this contention it is of importance that the High Seas Act deprived no state or federal court of a then existing right. As to the state courts 46 U.S.C.A. sec. 767 provides:

> Sec. 767. Exceptions from operation of chapter. The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter.

As originally drafted, the bill had an added clause limiting the state to acts in its own waters, reading: 'as to causes of action accruing within the territorial limits of any state'. Representative Mann offered an amendment striking out this clause. Mann gave as his reason for striking out the limiting clause that it was to save state statutes giving jurisdiction in high seas death cases. Some opposed because they wanted the Act to be exclusive. Others agreed to the amendment on the ground that Section 767 as passed would be held invalid on the ground of the constitutional control of Congress discussed above. Congress agreed with Mann who offered the amendment and the limitation was stricken from the bill.

Further, Mann no doubt had in mind some one of the federal cases, holding that the laws of the state controlled the action of persons within ships on the high seas and had construed their death statutes as applying there. *Southern Pac. Co. vs. De Valle Da Costa*, 1 Cir., 1911, 190 F. 689; *International Nav. Co. v. Lindstrom*, 2 Cir. 1903, 123 F. 475; *The James McGee*, S.D.N.Y. 1924, 300 F. 93; *The E. B. Ward, Jr.*, C.C.E.D.La. 1883, 17 F. 456. (Emphasis added.)

Even if Congress had not agreed with the interpretation of the proponent of the amendment, we would hesitate to construe the exceptive clause as depriving the states of the then existing jurisdictions shown as exercised in the above cited cases."

In the *Snipes* case, a workman was injured on one of the platforms in the Outer Continental Shelf. More than one year passed between the time of the injury and the time that Mr. Snipes brought suit. In that case, the defendant contended that Mr. Snipes' exclusive remedy was under the Louisiana Law and that therefore the Statute of Limitations had run against his claim, the Louisiana Statute requiring suit to be brought within one year from the date of the accident. However, the plaintiff countered with the contention that he had a federal remedy for the injury on the platform. The Court upheld the plaintiff's contention that the federal remedy was available. Thus, the holding in the *Snipes* case was only that the state remedy was not exclusive. The *Snipes* case was not involved with the issue of whether either the state or the federal law were exclusive. The issue raised was only whether the state law was the exclusive remedy, and the Court properly held that it was not. The *Snipes* case is therefore certainly not authority for the proposition that the federal law is exclusive.

RESPONDENTS' DISCUSSION OF THE LEGISLATIVE HISTORY OF THE DEATH ON THE HIGH SEAS ACT.

Respondents quoted a portion of the legislative history of the Death on the High Seas Act, quoting excerpts

from the debates and the thoughts of some of the legislators prior to the vote on the amendment which, if passed, would remove (and did remove) that section of the Death on the High Seas Act which provided that the Act would be an exclusive remedy. It is true that during that *prior* debate, *some* of the parties thought that the Death on the High Seas Act should be exclusive. It is also quite true that the Honorable Harrington Putnam who had drafted the bill and who had inserted in it the provision which made it an exclusive remedy thought that it should be an exclusive remedy. However, the brutal fact is that *after* the debate, the amendment which struck the exclusive remedy provisions from the act was passed. As enacted, the act by its plain terms is not an exclusive remedy (See 46 U.S.C. 767). It appears difficult to see how the argument can be made that since before it was amended the act was designed to be an exclusive remedy that it should remain so after it was expressly amended so as to read that the act is not an exclusive remedy.

It is respectfully submitted that the instant cases should be remanded as prayed for in the original brief submitted on behalf of petitioners herein.

Respectfully submitted,

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CERTIFICATE.

This is to certify that I have this day mailed a copy of the above and foregoing Reply Brief Filed on Behalf of Petitioners, Paulette Boudreaux Rodrigue, et al., and Ella Mae Dubois Dore, Individually, etc, to Mr. Richard C. Baldwin, Adams and Reese, 847 National Bank of Commerce Building, New Orleans, Louisiana; Mr. Thomas W. Thorne, Jr., Lemle, Kelleher, Kohlmeyer, Matthews & Schumacher, National Bank of Commerce Building, New Orleans, Louisiana; Mr. Lancelot P. Olinde, Humble Oil & Refining Company, P. O. Box 60626, New Orleans, Louisiana; Mr. H. Lee Leonard, Voorhies, Labbe, Fontenot, Leonard & McGlasson, Lafayette, Louisiana; and Mr. James E. Diaz, Davidson, Meaux, Onebane & Donohoe, 201 West Main Street, Lafayette, Louisiana.

February, 1969.

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ARTHUR CARLUCCI AND BUREAU COMPANY ET AL.

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

No. 436

**PAULETTE BOUDREAUX RODRIGUE, ET AL.,
and
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,**

versus

**AETNA CASUALTY AND SURETY COMPANY, ET AL.,
and
THE LINK BELT COMPANY, ET AL.,
Respondents.**

**SPECIAL BRIEF FILED ON BEHALF OF PETI-
TIONERS, PAULETTE BOUDREAUX ROD-
RIGUE, ET AL., AND ELLA MAE DUBOIS
DORE, INDIVIDUALLY, ETC.**

MAY IT PLEASE THE COURT:

This brief is filed in response to the order of this Court issued April 2, 1969 inviting the parties and the Solicitor General to file further briefs addressing the following question:

"In light of the cases in this Court relating to the limits of admiralty jurisdiction, such as

Phoenix Construction Co. v. The Steamer Poughkeepsie, 212 U.S. 558, affirming 162 F. 494 (1908 D.C. S.D. N.Y.), and in light of the language and legislative history of the Outer Continental Shelf Lands Act, does the Death on the High Seas Act apply to these accidents?"

Traditionally, accidents which occur on piers, wharves or other structures which are firmly fixed to the bed of navigable waters have not been maritime torts.¹

It does not matter whether the pier or wharf actually abuts a bank or levee. The fact that an open space or gap exists between a pier, dock or wharf and the bank does not make the accidents which occur upon the pier, dock or wharf maritime.²

The size of the gap or open area between the pier, dock or wharf or other structure and the bank does not make any difference.³

The two structures involved in this case are located off the coast of Louisiana. In the coastal areas of Louisiana there are numerous, literally thousands, of structures over navigable waters.

¹ See e.g. *T. Smith & Son, Inc. v. Taylor*, 276 U.S. 179, 1928 A.M.C. 447; *Wiper v. Great Lakes Engineering Works*, 340 F. 2d 727, 1965 A.M.C. 2509; *Hastings v. Mann*, 340 F. 2d 910, 1965 A.M.C. 549; *Bird v. S.S. Fortuna*, 232 F. Supp. 690, 1964 A.M.C. 2394.

² *Phoenix Construction Co. v. The Steamer Poughkeepsie*, 212 U.S. 558; *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19, 1926 A.M.C. 682.

³ *U. S. v. S.S. Panoil*, 266 U.S. 433, 1925 A.M.C. 181; *The Senator Rice*, 234 F. 101; *Ruddiman v. A Scow Platform*, 38 F. 158.

There are the standard wharves, docks and piers that are constructed on pilings over navigable waters in both the Mississippi River and in the bays and lakes and in Gulf waters. Normally, one edge of these docks, wharves and piers abuts an embankment while the opposite end extends over navigable waters.

Additionally, there are thousands of structures or platforms that are usually made of planks supported by pilings which serve as working areas for and in connection with oil and gas wells that are drilled in the canals, lakes and bays, and the Gulf of Mexico.

A typical oilfield would be the Terrebonne Bay Field. The way in which that field was developed is as follows:

A drilling barge would be towed to a location in the bay. A drilling rig, including derrick, is mounted on the barge. The drilling is done from the barge.⁴

When the well is completed, all that extends out of the water is a "christmas tree". The christmas tree is simply a pipe with a number of valves on it so that the flow of oil or gas can be regulated by manipulation of the valves.

When the drilling barge leaves, a small platform usually six or eight feet wide by ten or twelve feet

⁴ See for example, the facts in *Guilbeau v. Falcon Seaboard Drilling Co.*, 215 F. Supp. 909.

long, is built around the christmas tree. It is nothing but planks for flooring with a hole being left in the middle to accommodate the christmas tree. The flooring is supported normally by eight or ten pilings which are driven into the bed of the bay. The flooring is usually approximately four feet above high water level. The platforms of this type that are in more protected areas of the bay are somewhat smaller and lower to the water than the platforms at the Gulf "edge" of the bay. The difference in size is due to the difference in wave and weather potentiality. The purpose of the structures is to allow those persons who from time to time work with the valves on the christmas tree to have a place to stand while working.⁵

The above referred to small structures are commonplace in the marshy areas and navigable waters throughout South Louisiana. In the Terrebonne Bay Field alone, there are over three hundred such structures. Some of the structures abut the bank, some are close to the bank and some are in the middle of the bay and some are in the waters where the Bay and the Gulf are the same water. And, of course, the platforms do not stop at the mouth of the bay; the platforms, increasing in size as they are placed seaward, are almost as numerous in the mouth of Terrebonne Bay and seaward as they are in Terrebonne Bay. There is no demarcation line distinguishing landward from seaward platforms.

⁵ See for example, the type of platform involved in *Texas Company v. Savoie*, 240 F. 2d 674, 1957 A.M.C. 340; note also the type of platform (and its location) described in *Continental Casualty Co. v. Associated Pipe & Supply Co.*, 279 F. Supp. 490 (E.D. La. 1967).

Any ruling as to the maritime status *vel non* of accidents which occur on the larger platforms in the Gulf would necessarily apply to each platform located in navigable waters landward of the platform involved.

The platforms which are constructed in connection with the development of the oil and gas fields which are in the subsoil and seabed of the navigable waters in the Gulf off the coast of Louisiana are virtually the same as those in the Terrebonne Bay Field and the oilfields in the other inland and coastal waters of the lakes and bays with but the exception that they are larger in order to provide safety in the anticipated heavier weather.

If a worker on a wharf that abuts an embankment but extends over navigable water, accidentally drops a hammer on the toe of another worker, is a maritime tort involved?

If a worker standing on one of the small platforms that surrounds a christmas tree in the Terrebonne Bay Field accidentally drops a hammer upon the toe of another worker, is a maritime tort involved?

If a worker who is standing on a platform on the seaward edge of Terrebonne Bay, accidentally drops a hammer on the toe of another worker standing on that platform, is a maritime tort involved?

If a worker standing on a platform ~~located in the~~ Outer Continental Shelf accidentally drops a hammer

on the toe of a fellow worker, is a maritime tort involved?

The above illustrates that if this Court were to hold a tort which occurs wholly upon one of the fixed structures in the Outer Continental Shelf to be a maritime tort, the vast body of jurisprudence exemplified by *Phoenix Construction Co. v. The Steamer Poughkeepsie*, 212 U.S. 558 (including torts occurring on piers and docks) would be reversed.

It would be most illogical to hold a tort on a fixed structure, that is just over three miles from shore (i.e. one to which the Outer Continental Shelf Lands Act applies) to be a maritime tort, but a tort that occurs on a neighboring platform just under three miles from shore (i.e. one to which the Outer Continental Shelf Lands Act does not apply) not to be a maritime tort.

Of course, as to those wrongs involving a vessel which might be used in connection with the structures, the maritime remedies are unquestionably available where the extension of the Admiralty Jurisdiction Act of 1948 (46 U.S.C. Section 740) is applicable. See *Guitierrez v. Waterman S. S. Corp.*, 373 U.S. 206. But those torts which occur wholly upon a fixed structure, with no vessel being involved, have traditionally not been, and it is respectfully submitted, are still not maritime torts.

The Outer Continental Shelf Lands Act clearly provides the appropriate and logical remedy. Persons on

those structures seaward of the three mile line are to have the same remedies as the persons on the neighboring ones on the landward side of the three mile line.

There is nothing in the Outer Continental Shelf Lands Act itself or its legislative history to indicate that maritime law is to apply to the fixed structures.

The portion of the Outer Continental Shelf Lands Act which specifies the law that is to be applied to civil (aside from taxes, which is specially dealt with elsewhere in the Act) and criminal matters arising on the fixed structures, 43 U.S.C. 1331 (a) (2), does not appear in the legislative history of the Act until most of the debate and committee meetings had already taken place. In the legislative history of the act there are few direct discussions on the point at issue here. However, the plain language of the Outer Continental Shelf Lands Act itself (see 43 U.S.C. 1331 (a) (2)) clearly specifies that state law as adopted federal law is to apply to the fixed structures and artificial islands. Additionally, what legislative history there is of the pertinent portion of the Outer Continental Shelf Lands Act further shows clearly that the legislators meant what they said in the statute in stating that state law as adopted federal law shall apply. See the exchange related in "Proceedings and Debates of the 83rd Congress, 1st Session" in Volume 99, Page 7264 of the Congressional Record where the following was stated:

"Mr. DANIEL."

Since we have applied State laws in the fields which are not covered by Federal laws or by regulations of the Secretary of the Interior, I should like to ask the Senator from Oregon whether he understands that State laws relating to conservation will apply in this area until and unless the Secretary of the Interior writes some rule or regulation to the contrary.

Mr. CORDON.

There can be no question about that; the Senator's statement is correct. The language clearly adopts State law as Federal law where it is not inconsistent with existing Federal law or with the rules and regulations of the Secretary of the Interior; and, of necessity, the inconsistency with respect to rules and regulations of the Secretary of the Interior must be in the case of those rules and regulations which it is within the power of the Secretary of the Interior to adopt.

When he has adopted them, those rules and regulations must be inconsistent with or in conflict with the conservation laws of the States, which are then the conservation laws of the United States with respect to that particular area, or else the laws of the States, having been adopted by the United States, apply to the area. There can be no question about it." (Emphasis added.)

The Legislature of the United States, in passing the Outer Continental Shelf Lands Act, squarely faced the

question of whether "State law or Federal law" should apply. The legislators were most cognizant of the problem, as is seen from 83rd Congress, First Session, Senate Report No. 133, Page 9, in the section entitled "Legislation for Continental Shelf" where it is stated:

"What Federal laws are applicable, what should apply? In what court, where situated, does jurisdiction lie or where should it be placed? Should new Federal law be enacted where existing statutes are wholly inadequate, or should the laws of abutting States be made applicable? The necessity for answering these questions is clear when we take note of the fact that the full development of the estimated values in the shelf area will require the efforts and the physical presence of thousands of workers on fixed structures in the shelf area. Industrial accidents, **accidental death**, peace and order—these and many other problems and situations need and must have legislative attention.

Therefore, the committee feels that the dual legislative approach is most desirable. Thereby each problem may be judged and determined by the Senate on its merits and subject to the particular and different considerations involved in each. As stated previously, the committee already has done considerable work toward recommending a legislative solution of the problems of the outer shelf, and it is committed to introducing and reporting to the Senate a measure, or measures, to that end as soon as possible during this session of the 83d Congress." (Emphasis added.)

The fact that there is little debate as reflected in the Congressional Record directly on the question of what laws should apply to the artificial islands and fixed structures does not detract from (but rather lends strength to) the clear wording in Section 1331 (a) (2) stating that the State law as adopted Federal law is applicable unless inconsistent with Federal law. The fact that there is no mention in the legislative history, the committee reports, the debate or in the Act itself, that the maritime law would be applicable is significant.

The legislature met the issue as to what law is to be applicable on the fixed structure and decided that issue without reference to the maritime law.

Thus, it is respectfully submitted that the Death on the High Seas Act does not apply to deaths which occur wholly upon the fixed structures.

The *Rodrigue* death occurred wholly upon the fixed structure involved, Mr. Rodrigue having fallen from high in the derrick and landing upon the floor of the structure. Therefore, the Death on the High Seas Act does not apply to the *Rodrigue* death. Thus the *Rodrigue* case should be remanded as prayed for in the original brief.

Inasmuch as the *Dore* death, according to the pleadings, occurred in connection with unloading of a vessel, the crane used in unloading the vessel allegedly being defectively mounted such that the crane (with Mr. Dore in its cab) toppled from the platform into the waters or vessel below, the *Dore* case should be remand-

ed for further determinations under the ruling that while deaths occurring wholly upon fixed platforms are not compensable under the Death on the High Seas Act absent other maritime involvement, hybrid situations may occur with sufficient maritime contacts for application of the Death on the High Seas Act in addition to other remedies.

It is most respectfully submitted, however, that the issue of whether the Death on the High Seas Act applies is not squarely before this Court. By the very words of the Death on the High Seas Act itself (in U.S.C. Section 767), it is clearly seen that the Death on the High Seas Act is not an exclusive remedy. Since the Act itself and the jurisprudence as related in previous briefs, establish that the Death on the High Seas Act is not an exclusive remedy, there can be no conflict between the state law (being adopted Federal law) and the Death on the High Seas Act. The only issue before this Court is whether the state death act as adopted Federal law is applicable so as to allow recovery of the non-pecuniary losses which are not recoverable under the Death on the High Seas Act.

Since the state death act is applicable regardless of whether the Death on the High Seas Act is applicable, the issue of whether the Death on the High Seas Act is applicable need not be delved into. This is so because even if the Death on the High Seas Act were applicable, it would not prevent the Louisiana Death Act as adopted Federal law from applying.

Similarly, the holding of the 5th Circuit in *Pure Oil v. Snipes*, 293 F. 2d 60 is not at issue in the instant cases. In *Snipes*, the defendant had urged that the State law (which encompassed a one-year statute of limitations) was the exclusive remedy of a man who was injured on a platform in falling from it into the sea, but the Court rejected the defendant's contention and held that the Federal law (the doctrine of laches) was available to plaintiff. The 5th Circuit's holding did not involve the question of whether both remedies would be available if the plaintiff's suit had been timely brought.

It is respectfully submitted that the relief prayed for in the original brief on behalf of petitioners be granted.

Respectfully submitted,

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CERTIFICATE.

This is to certify that I have this day mailed a copy of the above and foregoing Brief on Behalf of Petitioners, Paulette Boudreaux Rodrigue, et al., and Ella Mae Dubois Dore, Individually, etc. to Mr. Richard C. Baldwin, Adams and Reese, 847 National Bank of Commerce Building, New Orleans, Louisiana; Mr. Thomas W. Thorne, Jr., Lemle, Kelleher, Kohlmeyer, Matthews & Schumacher, National Bank of Commerce Building, New Orleans, Louisiana; Mr. Lancelot P. Olinde, Humble Oil & Refining Company, P. O. Box 60626, New Orleans, Louisiana; Mr. H. Lee Leonard, Voorhies, Labbe, Fontenot, Leonard & McGlasson, Lafayette, Louisiana; Mr. James E. Diaz, Davidson, Meaux, Onebane & Donohoe, 201 West Main Street, Lafayette, Louisiana, and the Solicitor General, Washington, D. C.

....., 1969.

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MAY 2 1969

HENRY F. BAKER, CLERK

Supreme Court of the United States

OCTOBER TERM

No. 436

PAULETTE BOUDREAU RODRIGUE, ET AL

and

ELLA MAE DUBOIS DOKE, INDIVIDUALLY, ETC.

Petitioners.

VERSUS

AETNA CASUALTY AND SURETY COMPANY, ET AL.

and

THE LINK BELT COMPANY, ET AL.

Respondents.

**SPECIAL BRIEF ON BEHALF OF AETNA CASUALTY &
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RESPONDENTS.**

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM

No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL
and
ELA MAE DUBOIS DORE, INDIVIDUALLY, ETC.
Petitioners,
versus

AETNA CASUALTY AND SURETY COMPANY,
ET AL,
and
THE LINK BELT COMPANY, ET AL,
Respondents.

SPECIAL BRIEF ON BEHALF OF AETNA
CASUALTY & SURETY COMPANY ET AL, AND
LINK BELT COMPANY, ET AL, RESPONDENTS

MAY IT PLEASE THE COURT:

In answer to this Honorable Court's question of whether or not the Death on the High Seas Act applies to these type of cases in light of the cases limiting admiralty jurisdiction and the Outer Continental Lands Act language and history, we answer this question in the affirmative. We definitely feel that there is admiralty jurisdiction and that the Congress in enacting the Outer Continental Shelf Lands Act in no way in-

tended to limit or replace the Death on the High Seas Act.

ADMIRALTY JURISDICTION OVER FIXED PLATFORMS IN THE OUTER CONTINENTAL SHELF LANDS AREA

There can be no doubt that Congress, when it enacted the Outer Continental Shelf Lands Act intended to preserve and reserve the Federal Maritime Law to this area. See 1953 U. S. Cong. & Adm. News, pp. 1391 and 1461. Congress specifically set forth their intention in 43 U. S. C. §1332 (B) where it stated:

"This subchapter shall be construed in such a manner that the character as high seas of the waters above the Outer Continental Shelf and the right to navigation and fishing therein shall not be affected."

Thus, we can see that Congress intended that these waters beneath these fixed platforms continue to be classified as part of the high seas.

We respectfully submit that the nature of the work together with the fact that this work is performed over navigable waters by these oil workers is a topic of such national importance that these activities should be governed by one uniform system of laws, which should not be subject to shifting policies of state legislatures.

The fact that one of these deaths occurred aboard the platform, while the other did not, we feel is of no real importance. The factors which we would like

to point out to the Court, which show that these structures should be regulated by Federal Maritime Law are as follows: These platforms are regulated and inspected by the Coast Guard, they are aids to navigation, the men working aboard these platforms face the same risks and dangers that seamen encounter.

The Coast Guard has been given authority to promulgate and enforce reasonable regulations with respect to the lighting, warning devices, safety equipment and other matters relating to the safety and property on these fixed structures. The Coast Guard regulates these structures in much the same way as it does a vessel. See 33 C. F. R. §140 et seq. pp. 538-549.

Many of the Gulf Coast fishermen navigate the Coastal Waters solely by reference to these rigs either by visually sighting the rigs by the day or locating their signal lights at night.

In regards to the hazards of these platform workers, as the Court pointed out in *Pure Oil v. Snipes*, 293 Fed. 2d 60, (5 Cir., 1961), these workers risk the same hazard of falling into navigable waters and drowning, that seamen encounter.

There are numerous authorities to the effect that it is immaterial whether or not a tort is committed aboard a vessel, if the tort is in fact committed upon the high seas or navigable waters. One of the first cases laying down this test, was set forth in the *Plymouth*, 1866, 3 Wall. 20, 70 U.S. 20, 18 L.Ed. 125, where the Court said in part:

"It is admitted by all the authorities that the jurisdiction of the admiralty over maritime torts depends upon locality — the high seas or other navigable waters within admiralty cognizance. . . the jurisdiction of the admiralty over maritime torts does not depend upon the wrong having been committed on board the vessel, but upon its having been committed upon the high seas or other navigable waters."

In addition to these deaths having a maritime location, we also submit that they involve maritime wrongs. These deaths also occurred on board these platforms which were aids to navigation, and which were regulated by the Coast Guard. Their duties in fact consisted of the same duties and risks and hazards which are incurred by other "seamen."

OUTER CONTINENTAL SHELF LANDS ACT

This Honorable Court is referred to the legislative history of the Outer Continental Shelf Lands Act, particularly that section setting forth the purpose of the legislation. (1953 U. S. Cong. & Adm. News; pp. 2177-8) The sole recited purpose of the Act was

"To amend the Submerged Lands Act in order that the area in the Outer Continental Shelf beyond boundaries of the states, may be leased and developed by the government." This expressed purpose is patent from an examination of the entire act. Chapter 345 - Public Law 212, 1953 U. S. Cong. & Adm. News, p. 506.

Certainly Congress did not intend to adopt those state laws which bear no relevancy or reasonable relation to the end which it sought to achieve by the legislation. On the contrary, the legislative history suggests that Congress was concerned only with adopting the police power of the adjacent states to the extent that they were relevant to the Congressional purpose, such as laws regulating taxation, conservation and control of the manner of conducting geophysical explorations. See 1953 U. S. Cong. & Adm. News, pp. 1406-7, 1391.

It is submitted that Congress did not intend to interfere with the jealously guarded uniformity of the Admiralty Law by adopting a waterfall of state statutes totally irrelevant to its expressed legislative purpose.

Within the area of maritime personal injuries, particularly those occurring beyond the three mile demarcation line, the body of Federal Maritime Law, we respectfully submit, is paramount. In *Pure Oil Company v. Snipes*, 293 F. 2d 60, (Fifth Cir., 1961), the Court recognized the necessity for federal pre-emption of maritime personal injury law, observing that, "Congress knew from long experience of the desirability — if not the constitutional necessity — of a substantial uniformity in dealing with matters maritime. It runs counter to the whole purpose of the Act to assume that Congress meant a matter of such importance as safety of life and limb should be left to the shifting policies of adjacent states."

Following this principle, the Courts have held inapplicable the state laws of contributory negligence

to personal injury actions occurring on the Outer Continental Shelf. *Loffland Bros. Company v. Roberts*, 386 Fed. 2d 540 (Fifth Cir., 1967). The Courts have likewise held that the indemnity law of the state is also inapplicable to the Outer Continental Shelf Act, see *Ocean Drilling and Exploration Co. v. Berry Bros. Oil Field Service, Inc.*, 377 Fed. 2d 511, (Fifth Cir., 1967).

We respectfully urge that Congress did not intend that the Outer Continental Shelf Lands Act adopt, as federal law, state created rights or remedies, not relevant to its legislative and violative of the uniformity of the Admiralty Law.

These death actions relate to navigation and commerce and therefore, the rights, obligations and liabilities of the parties should be governed by the maritime law so as not to work a material prejudice to the characteristic features of General Maritime Law or interfere with its uniformity.

If this Court so decides that the Death on the High Seas Act does not apply to these fixed platform deaths, then it will be placing these oil field workers in the same position that seamen were placed prior to the enactment of the Death on the High Seas Act. Since under the maritime law there is no action for wrongful death. *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 53 S.Ct. 173, 77 S.Ct. 368 (1932).

The District Courts would be faced with a floodtide of litigation involving which state law would be ap-

plicable to a given death since the lines as required by 43 U.S.C. § 1333 paragraph 2 have not been projected outward. As a natural result there will be much confusion as to just what state law is applicable. An example of this problem exists here in Louisiana where there is a dispute between Texas and Louisiana as to how their boundaries should be projected from the mouth of the Sabine River. The confusion that the undesignated boundaries could produce is certainly apparent to this Court.

In the event that this Honorable Court should find that Federal Maritime Law and the Death on the High Seas Act does not apply to deaths occurring on fixed platforms, and that state law should be used to give a remedy, it is respectfully submitted that the entire jurisprudence of the state death acts be applied in their entirety. This Court, in *Tungus v. Skovgaard*, 358 U.S. 588, 3 L. Ed. 2d 524, 79 S. Ct. 503, (1959), stated:

"The decisions of this Court long ago established that where admiralty adopts a state right of action for wrongful death, it must inforce the right as an integrated whole, with whatever conditions and limitations the creating state has attached. That is what was decided in the *Harrisburg*, where the Court's language was unmistakable: 'If the admiralty adopts the statute as a rule of right to be administered within its own jurisdiction, it must take the right subject to the limitations which have been made a part of its existence. . . The liability and the remedy are created by the same statutes, and the limitations of the remedy are, therefore, to be treated as limitations of the right.'

119 U.S. 199, at 214. That is the doctrine which has been reiterated by the Court through the years. See the Hamilton (Old Dominion SS Co. v. Gilmore) 207 U. S. 398, 52 L. Ed. 264, 28 S. Ct. 133; and numerous other citations omitted."

CONCLUSION

In conclusion, respondents respectfully submit that the Death on the High Seas Act is the proper remedy and right of oil workers performing their duties on fixed platforms in the Outer Continental Shelf in the Gulf of Mexico or elsewhere, and that this is their sole remedy. We further submit that to allow the application of the state's Wrongful Death Statute to supplement the Death on the High Seas Act would be in direct violation of the mandates of Congress as set forth in the Outer Continental Shelf Lands Act when it stated that all laws, "which are applicable and not inconsistent." There is no doubt that a state's Wrongful Death Act allowing for additional damages is inconsistent with the Federal Death Act which specifically set forth the amount of damages to be given to these individuals.

Respectfully submitted,

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CERTIFICATE

This is to certify that I have this day mailed a copy of the above and foregoing Brief in Opposition to Petition for a Writ of Certiorari to Mr. A. Deutsche O'Neal, Mr. Philip E. Henderson, Mr. Charles J. Hanemann, Jr., P. O. Box 590, O'Neal Building, Houma, Louisiana; Mr. George Arceneaux, Jr., 311 Góode Street, Houma, Louisiana; and Mr. Alfred S. Landry, Landry, Watkins, Cousin & Bonin, 211 East Main Street, New Iberia, Louisiana.

May _____, 1968

MAY 14 1939

S. M. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM

No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL

and

ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,

Petitioners,

versus

AETNA CASUALTY AND SURETY COMPANY, ET AL.

and

THE LINK BELT COMPANY, ET AL.

Respondents.

SUPPLEMENTAL SPECIAL BRIEF ON BEHALF OF AETNA
CASUALTY & SURETY COMPANY, ET AL. AND LINK
BELT COMPANY, ET AL. RESPONDENTS.

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INDEX

	Page
I. EXTENSION OF STATE LAND JURISPRUDENCE	2
II. TRADITIONAL APPLICATION OF MARITIME JURISDICTION ON FIXED STRUCTURES	5
CONCLUSION	23
CERTIFICATE	25

AUTHORITIES

Doullut & Williams Co. v. United States, 45 Sup. Ct. Rep., 411, 268 U.S. 33	10
Latta & Terry Construction Company v. British Steamship "Raithmoor", 36 S.Ct. Rep. 514, 241 U. S. 166	8
Loffland Brothers Company vs. Roberts, 386 F.2d 540 (5th Cir. 1967)	20
Movable Offshore Company vs. Ousley, 346 F.2d 870 (5th Cir. 1965)	19
Ocean Drilling and Exploration Company vs. Berry Bros. Oilfield Service, 377 F.2d 511 (5th Cir. 1967)	19
Pure Oil Company vs. Snipes, 293 F.2d 60 (5th Cir. 1961)	2, 17, 19, 23
Reed vs. Steamship Yaka, 83 S.Ct. 1349, 373 U.S. 410 (1963)	22
United States v. Evans, 25 S.Ct. Rep. 46, 195 U.S. 361 (1904)	5, 8

II
AUTHORITIES (Continued)

	Page
United States v. The John R. Williams, 144 F. 2d 451 (2nd Cir. 1944)	3
United States v. Matson Nav. Co., 201 F.2d 610	12

SUPREME COURT OF THE UNITED STATES
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PAULETTE BOUDREAUX RODRIGUE, ET AL,
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ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,
versus

AETNA CASUALTY and SURETY COMPANY, ET AL
and
THE LINK BELT COMPANY, ET AL,
Respondents.

SUPPLEMENTAL SPECIAL BRIEF FILED ON
BEHALF OF RESPONDENTS IN COMPLIANCE
WITH ORDER OF COURT

MAY IT PLEASE THE COURT:

This is a supplemental brief responding to the Court's query:

"In light of the cases in this Court relating to the limits of admiralty jurisdiction, such as *Phoenix Construction Co. vs. The Steamer Poughkeepsie*, 212 U.S. 558, affirming 162 F. 494 (1908 D.C. S.D. N.Y.), and in light of the language and legislative history of the Outer Continental Shelf Lands Act, does the Death

on the High Seas Act apply to these accidents?" See *Pure Oil Co. v. Snipes*, 293 F.2d 60 (C.A. 5th Cir. 1961).'

In essence, the Court has requested a discussion of the applicability of two lines of jurisprudence referable to accidents on stationary platforms, (1) those cases arising out of accidents occurring on territorial waters of a state and (2) those cases arising out of accidents occurring on the high seas. The first classification is represented by the case of *Phoenix Construction Company, supra*, and the second line of jurisprudence is represented by the *Pure Oil Company v. Snipes, supra*.

I. Extension of State Land Jurisprudence.

The first line of jurisprudence involves a dispute between conflicting jurisdictions, the Federal *Admiralty* and *Maritime* jurisdictions and the state law jurisdiction on the land or extensions of the land. The *Phoenix Construction Company case, supra*, has as its rationale not that the accident occurred on a structure affixed to the bottom of a river, but rather that the structure was an indispensable part of land-based operations similar to those cases involving the land based operations carried out from wharves, piers, bridges, etc. Note in the *Phoenix Construction Company case, supra*, the fact that the pipe borings were made for the purpose of locating the site of an aqueduct to be built under the Hudson River to carry water from the Catskills to the City of New York. The fact that this was an artificial structure approximately eight hundred

(800) feet from the nearest point of shore is not the distinguishing factor in this line of jurisprudence.

The later decisions of the Federal court establish that the crucial factor in the *Phoenix* case is the fact that the operations of which the structure was a part, was not considered a traditional subject matter of Maritime jurisdiction. As an example of this the Court should consider the case of *United States v. The John R. Williams*, 144 F.2d 451 (2nd Cir. 1944), decided by Judge Hand which held Maritime and Admiralty jurisdiction inapplicable to a suit filed by a telephone company for damage to its submarine cable as a result of action by a vessel. As indicated by Judge Hand, the Federal Maritime law at the time would have resulted in Admiralty jurisdiction "if the cable had been in fault and injured the tug"; but in the situation involving damage to the cable as a result of negligence by the tug, the *Phoenix Construction Company* case, *supra*, was controlling and jurisdiction rejected. Thus, jurisdiction depended, not upon connexity between the structure and the river bed but rather upon the local nature of the work being performed from the platform or as in the *John R. Williams* case, *supra*, the local nature of the submarine cable.

In the case at bar there is no question but that local concern or state law jurisdiction is of no concern since the Outer Continental Shelf Lands Act specifically limits the state law jurisdiction to three marine leagues from shore.

Section 1301 B defines the boundaries of states on the Gulf of Mexico as follows:

"(b) The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . or as heretofore approved by the Congress, or as extended or confirmed pursuant to Section 1312 of this Title *but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than . . . three marine leagues into the Gulf of Mexico;*

See also U. S. v. States of La., Tex., Miss., Ala. and Fla., Ala., Fla., La., Miss. & Tex. 1960, 80 S.Ct. 961, 363 U.S. 1.

Therefore, the cases represented by the *Phoenix Construction Company* decision, *supra*, are not applicable and cannot be the basis of holding that platforms on the high seas are extensions of the land, because the problem of local concern is not present with reference to accidents occurring on stationary platforms on the Outer Continental Shelf, by definition of Congress. Clearly in this case, there is involved a platform on the Outer Continental Shelf which by definition is not part of the territories of any state, and is not of any local concern.

II. *Traditional Application of Maritime Jurisdiction on Fixed Structures.*

The United States Supreme Court in various decisions hereinafter discussed, has applied maritime jurisdiction to structures affixed to the bottom of navigable waters where federal concern rather than local concern was of paramount importance. In *United States v. Evans*, 25 S.Ct. Rep. 46, 195 U.S. 361 (1904), the Court was presented with a libel in rem against a British vessel for destruction of a beacon. The beacon stood fifteen (15) or twenty (20) feet from the channel of Mobile River or Bay in fifteen (15) feet of water and was built on piles driven firmly into the bottom.

"There is no question that it was attached to the realty...."

In spite of this fact, the district court declined jurisdiction. Justice Holmes quotes the following excerpts from various prior decisions, pointing up the fact that the beacon's connexity with the river bed was not of crucial importance.

"The precise scope of admiralty jurisdiction is not a matter of obvious principle or of very accurate history. As to principle, it is clear that if the beacon had been in fault, and had hurt the ship, a libel could have been maintained against a private owner, although not in rem."

* * * *

"But, as has been suggested, there seems to be no reason why the fact that the injured property was afloat should have more weight in determining the jurisdiction than the fact that the cause of the injury was."

* * * *

"And again, it seems more arbitrary than rational to treat attachment to the soil as a peremptory bar, outweighing the considerations that the injured thing was an instrument of navigation, and no part of the shore, but surrounded on every side by water, a mere point projecting from the sea."

In reaching the conclusion that this particular structure in the water did not fall within the rule of extension of the land, Justice Holmes used the following language:

"In the case of *The Plymouth* there was nothing maritime in the nature of the tort for which the vessel was attached. The fact that the fire originated on a vessel gave no character to the result, and that circumstance is mentioned in the judgment of the court, and is contrasted with collision, although the consideration is not adhered to as the sole ground for the decree. It has been given weight in other cases. *Campbell v. H. Hackfeld & Co.*, 62 C. C. A. 274, 125 Fed. 696; *Queen v. London Court Judge* (1892) 1 Q.B. 273, 294; *Benedict, Admiralty*, 3d ed. Sec. 308. Moreover, the damage was done wholly upon the

mainland. It never has been decided that every fixture in the midst of the sea was governed by the same rule. The contrary has been supposed in some American cases (*The Arkansas*, 5 McCrary, 364, 17 Fed. 383, 387; the *F. & P. M. No. 2*, 33 Fed. 511, 515), and is indicated by the English books cited above. It is unnecessary to determine the relative weight of the different elements of distinction between *The Plymouth* and the case at bar. It is enough to say that we now are dealing with an injury to a government aid to navigation from ancient times subject to the admiralty — a beacon emerging from the water — injured by the motion of the vessel, by a continuous act, beginning and consummated upon navigable water, and giving character to the effects upon a point which is only technically land, through a connection at the bottom of the sea. In such a case jurisdiction may be taken without transcending the limits of the Constitution or encountering *The Plymouth* or any other authority binding on this court. As to the present English law, see *The Uhla*, L. R. 2 Adm. & Eccl. 29, note; *The Swift* (1901) P. 168."

Thus the mere fact that a fixed structure attached to the seabed is involved, is not sufficient to exclude accidents occurring on the platform from Maritime jurisdiction. On the contrary, as stated by Justice Holmes,

"It never has been decided that every fixture in the midst of the sea was governed by the same rule. The contrary has been supposed in some American cases . . . , and is indicated by the English books cited above."

In the *Evans* case, *supra*, Justice Holmes refused to consider what relative weight should be given to the different elements of distinction, i.e., aid in navigation, structure located without connection with the land, injury by the motion of a vessel, a *continuous act beginning and consummated over an area generally governed by Maritime Law*.

Of similar import, is the case of *Latta & Terry Construction Company v. British Steamship "Raithmoor"*, 36 S.Ct. Rep. 514, 241 U. S. 166. This case involved damage to an unfinished pier intended to support a government beacon. The pier was to have no physical connection with the shore. The Court, in applying maritime jurisdiction to the unfinished pier, through Justice Hughes used the following language in reference to the *Evans* case, *supra*, with approval:

"It is enough to say that we now are dealing with an injury to a government aid to navigation from ancient times subject to the admiralty. — a beacon emerging from the water, injured by the motion of the vessel, by a continuous act beginning and consummated upon navigable water, and giving character to the effects upon a point which is only technically land, through a connection at the bottom of

the sea." (Id. p. 367.) It was suggested in the concurring opinion of Mr. Justice Brown (Id. p. 368) that the decision practically overruled the earlier cases, and that it recognized the principle of the English statute extending the jurisdiction of the admiralty court to 'any claim for damages by any ship.' This consequence, however, was expressly denied in *Cleveland Terminal & Valley R. Co. v. Cleveland S. S. Co.* 208 U. S. 316, 320, 52 L. ed. 508, 512, 28 Sup. Ct. Rep. 414, 13 Ann. Cas. 1215. In that case it was decided that the admiralty did not have jurisdiction of a claim for damages caused by a vessel adrift, through its alleged fault, to the center pier of a bridge spanning a navigable river and to a shore abutment and dock. Referring to *The Blackheath*, and drawing the distinction we have noted, the court said: '*The damage*' (that is, in *The Blackheath*) '*was to property located in navigable waters, solely an aid to navigation and maritime in nature, and having no other purpose or function But the bridges, shore docks, protection piling, piers, etc.*' (of the *Cleveland Terminal Company*) '*pertained to the land. They were structures connected with the shore and immediately concerned commerce upon land. None of these structures were aids to navigation in the maritime sense, but extensions of the shore, and aids to commerce on land as such.*'"

Additionally, in the case of *Doullut & Williams Co. vs. United States*, 45 Sup. Ct. Rep., 411, 268 U. S. 33, the Court was faced with a determination of whether or not a cluster of pilings located in a river was within Admiralty and Maritime jurisdiction as traditionally interpreted under the decisions mentioned above. The pilings were in sixteen (16) feet of water and extended approximately twenty-five (25) feet above the water and had no physical connection with the shore. They were apparently mainly used for tying vessels during bad weather and when the Mississippi River was on the rise. Part of the allegations which were quoted by the Court as the factual base for the decision is:

"At no time do any vessels use said pile cluster to load or unload cargo or passengers, said pile cluster being incapable of so being used, and incapable of being used for any commerce on land."

The Court used the following language in holding that this set of pilings, though a fixed structure on the river bed, was within Admiralty jurisdiction:

"The damaged pilings constituted no part or extension of the shore, as wharves, bridges, and piers do. Although driven into the bottom of the river, and attached in that way only to the land, they were completely surrounded by navigable water, and were used exclusively as aids to navigation. We think injuries to them by a ship come fairly within the principle approved by *The Blackheath*, 195 U. S.

361, 25 S. Ct. 46, 49 L. Ed. 236, and *The Raithmoor*, 241 U. S. 166, 36 S. Ct. 514, 60 L. Ed. 937. See Hughes on Admiralty (2d Ed.) Sec. 100.

"The District Court erred in denying jurisdiction, and its decree must be reversed."

Thus, it would appear that the Courts have given some consideration to the physical contact of a structure with the land; but, it is also clear that many other factors enter into the ultimate decision whether a structure is within the Maritime jurisdiction. It is apparent that connection with land base commerce which makes the operation of local concern, is one of the crucial factors and thus piers used for loading and unloading of vessels are held to be extensions of the land even though the loading and unloading process is work which is Maritime in nature.

With this in mind, it is submitted that the work being performed on the Outer Continental Shelf is not of local concern. It is not a part of an operation such as existed in the *Phoenix Construction Company* case, concerning the movement of water from one land area to another. It is not similar in nature to the loading and unloading of vessels from a pier which becomes a part of the storage of goods and land based commerce. On the contrary, it is an operation which at most, has some supply connection with the land, but otherwise is begun and completed on the high seas. Of even greater importance is the fact that the areas here involved - including the platforms - is, as shown by the Submerged Lands Act, of major federal concern.

Moreover, even if it is assumed that the drilling of oil wells have some connection with the land merely because supplies are shipped from the land to these locations on the high seas, it must still be recognized that Congress can and has brought this within Admiralty and Maritime jurisdiction under the provisions of the Outer Continental Shelf Lands Act. In this connection, the Court's attention is called to the cases involving the Admiralty Extension Act which have included certain accidents occurring on extensions of the land in Admiralty jurisdiction. As stated by the courts, Congress cannot broaden its maritime jurisdiction as granted under the Constitution, but it can exercise its power to the fullest and thus include certain areas which the Courts had previously refused to place traditionally within the Admiralty jurisdiction. Without covering extensively this jurisprudence, the court in the case of *United States v. Matson Nav. Co.*, 201 F.2d 610, commenting on the constitutionality of the Admiralty Extension Act, stated as follows:

"In his classic discussion and analysis of the admiralty law, Justice Story rejects as limitations to the constitutional scope of admiralty jurisdiction of federal courts in the United States the admiralty jurisdiction exercised by the English admiralty courts at the time of the American Revolution or at the time of the emigration of our ancestors from England. Nor, he continues, is the scope of the admiralty jurisdiction conferred by the Constitution confined to the jurisdiction which was actually exercised in the English colonies which joined

to form the United States, since the admiralty jurisdiction of the Colonies was limited by the grants of the English masters. He suggests rather that the Constitutional grant must be liberally construed to encompass all that can be included in the ancient laws, customs, and usages of the sea, not only in England before the restrictive statutes were passed, but also in the maritime courts of all the other powers of Europe. Moreover, he points out that the grant of jurisdiction not only uses the word 'admiralty' but also the word 'maritime', and must there include 'jurisdiction of all things done upon and relating to the sea . . .'

"Damage to a land structure by a ship, historically and through experience and usage, has been generally made cognizable in foreign maritime courts. The jurisdiction of the English admiralty courts over such torts, after centuries of prohibition by the kings, common law courts, and Parliament, was restored in 1861. And injuries to shore structures by ships have long been recognized as maritime torts by the Continental courts. As the Supreme Court said in *The Blackheath*, *supra*, 195 U. S. at page 365, 25 S.Ct. at page 47, 49 L.Ed. 236, 'there seems to be no reason why the fact that the injured property was afloat should have more weight in determining the jurisdiction than the fact that the cause of the injury was.' . . .

"The Supreme Court upheld the Act in *Richardson v. Harmon*, *supra*, even though it considered the Act as an extension of admiralty jurisdiction to theretofore non-maritime torts. Cf. *The Plymouth*, *supra*. 'The authority' of the Congress to enact legislation of this nature was not limited by previous decisions as to the extent of the admiralty jurisdiction. We have had abundant reason to realize that our experience and new conditions give rise to new conceptions of maritime concerns. These may require that former criteria of jurisdiction be abandoned in discarding the doctrine that the admiralty jurisdiction was limited to tide-waters.' *Detroit Trust Co. v. Barlum S. S. Co.*, *supra*, 293 U.S. at page 52, 55 S. Ct. at page 41, 79 L.Ed. 176.

"We conclude that the Admiralty Extension Act of 1948, 46 U.S.C.A. § 740, was a constitutional exercise of the power of Congress under the Constitution. See *American Bridge Co. v. The Gloria O*, D.C., 1951, 98 F.Supp. 71."

In view of the above and the numerous other cases upholding the constitutionality of the Admiralty Extension Act, and particularly in view of Judge Story's language, there should be no doubt that the platform structures on the Outer Continental Shelf, some of which are fixed and some of which are movable — in the cases at bar fixed platforms are involved — are within the constitutional grant to Congress of

'jurisdiction of all things done upon and relating to the sea.'

There appears to be a clear statement by Congress that the platforms are to be covered under the Admiralty and Maritime grant of jurisdiction under the Constitution. In this connection, the Court's attention is directed again to the quoted portion of Title 43, Section 1301 (b) which limits a state's territories to three (3) marine leagues to the Gulf of Mexico. In the cases at bar, the accidents occurred beyond the three marine league boundary.

In Title 43, Section 1333 (a) (1), Congress has stated:

"The constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon . . ."

Title 43, Section 1333 (b) provides:

"The United States District Courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the Outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the Outer Continental Shelf."

Congress recognizing the importance of these structures from a navigational or obstruction to navigation standpoint, provided in Section 1333 (e):

"(1) The head of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the islands and structures referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary."

"(2) The head of the Department in which the Coast Guard is operating may mark for the protection of navigation any such island or structure. . . .

"(f) The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to artificial islands and fixed structures located on the Outer Continental Shelf."

In conclusion, it is submitted to the Court that: (a) there is ample jurisprudential authority to apply admiralty and maritime jurisdiction to accidents occurring on stationary platforms located on the Outer Continental Shelf that are entirely surrounded by water, that are objects of navigational control, that because of their situs, are not of local state concern and are

of paramount federal concern and (b) with respect to stationary platforms located on the Outer Continental Shelf, the Federal Congress has specifically enacted a law which makes federal jurisdiction and laws applicable to these platforms.

Pure Oil Company vs. Snipes, 293 F.2d 60 (5th Cir. 1961), upheld this position that general maritime law was applicable to a stationary platform located in the Outer Continental Shelf.

"This is so because the Outer Continental Shelf Lands Act itself reveals that when it is federal, not adjacent state, law to apply, Congress adopted the maritime standards. At least two specific items evidence this. This evidential material serves a dual role: in demonstrating that (1) Congress chose the maritime law as the federal law it proves also that (2) federal, not state, law was to apply.

"First, Congress committed to the agency traditionally charged with regulation and enforcement of maritime matters the duty and 'authority to promulgate and enforce * * * regulations with respect to * * * safety equipment, and other matters relating to the promotion of safety of life and property * * * on the artificial islands, structures or waters adjacent thereto. The agency specifically named was the Coast Guard. Contrary to the contentions of *Puré*, this statutory obligation and authority transcends the mere marking of the structures

either as an aid to navigation or the warning of its presence as an obstruction. See also Sec. 1333 (e) (2) and (f). In accordance with the statutory mandate the Commandant of the Coast Guard has promulgated extensive regulations which reflect a view that whether manned or unmanned, fixed or submersible, these oil well drilling structures located in the midst of the high seas present substantially all of the perils of the seas and are therefore to be regulated as such. One such hazard expressly recognized is the likelihood of falling on to the deck or into the ocean. This elaborate administrative establishment to assure reasonable safety to all persons working on such platforms without particular regard to their status as an employee, independent contractor, employee of an independent contractor, or service personnel reflects a dual congressional determination. The first is that as the hazards and risks are essentially maritime, it is appropriate that standards of safety be those imposed by the maritime law with policing and enforcement left to a traditional maritime agency. And second, it was a determination that this matter could not adequately be left to the adjacent states either in the creation of the underlying substantive standards or in their enforcement. Of course enforcement and effectuation of such congressional policy makes the question of sanctions, including that of civil tort liability, of like congressional concern.

"The second indicia found in the terms of the Outer Continental Shelf Lands Act itself is its express adoption of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. Sec. 901 et seq., as the basis of compensation for death or disability of an employee. 43 U.S.C.A. Sec. 1333 (c). This is of significance for several reasons. One has to do with general safety conditions showing again the congressional concern for a federal policy. The other bears directly on the subject at hand & a suit by an injured employee against a third party."

* * * *

"Congress knew from long experience the desirability — if not the constitutional necessity — of a substantial uniformity in dealing with matters maritime. It runs counter to the whole purpose of the Act to assume that Congress meant a matter of such importance as safety of life and limb should be left to the shifting policies of adjacent states."

Following the *Pure Oil Company* case was *Movable Offshore Company vs. Ousley*, 346 F.2d 870 (5th Cir. 1965), which affirmed the determination that maritime law was applicable to a stationary platform located on the Outer Continental Shelf. In the wake of *Ousley* came *Ocean Drilling and Exploration Company vs. Berry Bros. Oilfield Service*, 377 F.2d 511 (5th Cir. 1967), a landmark decision in which the Court held that federal maritime law applied to stationary platforms, that there could be no right of tort indemnity

against the employer of the injured plaintiff, and that the *Ryan* doctrine was not applicable on stationary platforms. This Court had an opportunity on application for Writs of Certiorari in this case, to review the jurisprudential rule of maritime law application to stationary platforms, denied the writs (389 U.S. 849) and inferentially approved this rule of law.

Judicial reliance on this rule of law continued as exemplified by the case of *Loffland Brothers Company vs. Roberts*, 386 F.2d 540 (5th Cir. 1967), which again held unequivocally that maritime law applied to stationary platforms irrespective of whether the injury was consummated on the platform or on the water. The Court stated as follows on Page 545:

"In *Pure Oil Co. v. Snipes*, 293 F.2d 60 (5 Cir. 1961) this Court carefully reviewed the Outer Continental Shelf Lands Act and concluded that Congress deemed the hazards presented by the offshore drilling platforms to be maritime in nature. We therefore held that under the Act federal maritime law was to apply to torts occurring on these offshore platforms. That decision has been consistently followed by this Court. See, e.g., *Movable Offshore Co. v. Ousley*, 346 F.2d 870 (5 Cir. 1965); *Ocean Drilling & Exploration Co. v. Berry Bros. Oilfield Service, Inc.*, 377 F.2d 511 (5 Cir. 1967). *Loffland* seeks to distinguish *Snipes* on the ground that the plaintiff there fell from the platform to the sea. It argues that traditionally the location of the tort has determined whether or not

maritime law applied. Since Roberts' injury was consummated solely on the platform, maritime law does not apply. We disagree. In *Snipes* the Court noted that the historical tests for determining whether a tort was within the admiralty jurisdiction of the federal courts were not applicable in cases involving torts occurring on offshore drilling platforms since Congress had directed in the Outer Continental Shelf Lands Act that maritime law be applied. 293 F.2d at 65-66. See *Movable Offshore Co.*, supra; Cf. *Magnolia Towing Co. v. Pace*, 378 F.2d 12 (5 Cir. 1967). Thus, it is clear that the decisions of this Court require the application of maritime law to this case. We can find no valid reasons to depart from the rationale and holdings of those decisions, and we decline to do so."

Writs for Certiorari were applied for to this Court and denied. 88 S.Ct. 778 (1968).

This Court on two separate occasions within the last two years has tacitly approved the rule that maritime law applies to stationary platforms.

Were this Court to hold in these two cases presently under consideration that the Death on the High Seas Act did not apply, it would have to find that maritime law has no application on stationary platforms and would be reversing the cases previously referred to, leaving this field of law in chaotic turmoil.

The uniformity of law which so tenaciously has been sought by Congress in its legislation - the Death on the High Seas Act, the Jones Act, the Extension of Admiralty Act, the Outer Continental Shelf Lands Act - would be annihilated, and the law to be applied would be the variant laws of fifty states. An additional problem lies in that the Outer Continental Shelf Lands Act provides that a determination of what state law shall be adopted will be predicated on the Federal Executive projecting state boundaries into the Shelf; such projection has not been accomplished and therefore there can be no determination of what state law is to be adopted in these two cases. See 43 U.S.C. Section 1331 (a) (2).

This Court has emphasized not only uniformity in law but uniformity in ultimate result. *Reed vs. Steamship Yaka*, 83 S.Ct. 1349, 373 U.S. 410 (1963). If this Court were to hold that maritime law does not apply to stationary platforms, incongruous results would flow; these cases at bar illustrate it: in the *Rodrigue* case the deceased died when he hit the drilling floor on the stationary platform, and were the Court to hold the Death on the High Seas Act did not apply, some state law would apply with rules variant to the maritime law; in the *Dore* case, the deceased died when he hit a vessel tied alongside the platform, so the Death on the High Seas Act would apply.

The judiciary to this date has vitalized the Federal Congressional intent embodied on the Outer Continental Shelf Lands Act, by applying federal maritime uniform law to operations on the Outer Continental Shelf which are of paramount federal concern. This Court

is requested to explicitly ratify the jurisprudential rule which it previously tacitly approved that maritime law is to apply to stationary platforms in the Outer Continental Shelf.

CONCLUSION

(1) The jurisprudential rule exemplified by the *Phoenix* decision, of inapplicability of maritime jurisdiction to extensions of land located on state territorial waters involving operations of local concern are inapplicable to the cases at bar which deal with stationary platforms on the Outer Continental Shelf, completely surrounded by water and of exclusive federal concern.

(2) The Federal Congress enacted the Outer Continental Shelf Lands Act to provide exclusive federal jurisdiction and federal maritime law to these stationary platforms to ensure uniformity, safety in navigation and remedies to the personnel on these stationary platforms. The Fifth Circuit in at least four cases beginning with *Pure Oil Company vs. Snipes*, *supra*, has put into effect the Congressional intent by holding that maritime federal law is exclusive in this field and to this date this Court has tacitly approved this rule of law. In these two cases before the bar, this Court is requested to dispel all doubts, and give stability and uniformity to the law by affirming the

holding of the Fifth Circuit Court of Appeals cases that
the Death on the High Seas Act is the exclusive remedy.

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CERTIFICATE

This is to certify that I have this day mailed a copy of the above and foregoing Supplemental Special Brief to Mr. A. Deutsche O'Neal, Mr. Philip E. Henderson, Mr. Charles J. Hanemann, Jr., P. O. Box 590, O'Neal Building, Houma, Louisiana; Mr. George Arceneaux, Jr., 311 Goode Street, Houma, Louisiana; and Mr. Alfred S. Landry, Landry, Watkins, Cousin & Bonin, 211 East Main Street, New Iberia, Louisiana.

May —, 1969

INDEX

	Page
Statutes involved.....	2
Statement.....	4
Argument.....	5
I. In the Outer Continental Shelf Lands Act Congress did not change the coverage of the Death on the High Seas Act.....	6
II. The Death on the High Seas Act Covers Accidents Occurring on Offshore Drilling Platforms.....	12
III. The Application of the Death on the High Seas Act to Accidents Occurring on Offshore Drilling Platforms Would Not Violate Constitutional Restrictions on the Scope of Admiralty Jurisdiction.....	20
Conclusion.....	24

CITATIONS

Cases:

<i>Arkansas, The</i> , 17 Fed. 383.....	22
<i>Atlee v. Packet Co.</i> , 21 Wall. 389.....	22, 23
<i>Blackheath, The</i> , 195 U.S. 361.....	22
<i>Calbeck v. Travelers Insurance Co.</i> , 370 U.S. 114.....	17
<i>Cleveland Terminal R.R. Co. v. Cleveland S.S. Co.</i> , 208 U.S. 316.....	21, 23
<i>D'Aleman v. Pan American World Airways</i> , 259 F. 2d 493.....	15, 18
<i>Dixon v. Oosting</i> , 238 F. Supp. 25.....	16, 17
<i>Dore v. Link Belt Company</i> , 391 F. 2d 671.....	5
<i>Doullut & Williams Co. v. United States</i> , 268 U.S. 33.....	15, 21, 23
<i>Gutierrez v. Waterman S.S. Corp.</i> , 373 U.S. 206.....	22
<i>Hamilton, The</i> , 207 U.S. 398.....	13
<i>Harrisburg, The</i> , 119 U.S. 199.....	13

(1)

Cases—Continued

<i>Johnson v. Chicago & Pacific Elevator Co.</i> , 119 U.S. 388.....	Page 21
<i>Loffland Bros. Co. v. Roberts</i> , 386 F. 2d 540 certiorari denied, 389 U.S. 1040.....	6
<i>Martin v. West</i> , 222 U.S. 191.....	21
<i>Motible Offshore Co. v. Ousley</i> , 346 F. 2d 870.....	6
<i>Nazirema Operating Co., Inc. and John P. Traynor v. Johnson</i> , Nos. 528 and 53, Oct. Term 1968.....	19
<i>Ocean Drilling & Exp. Co. v. Berry Bros. Oilfield Service</i> , 377 F. 2d 511.....	6
<i>O'Donnell v. Great Lakes Dredge & Dock Co.</i> , 318 U.S. 36.....	16
<i>Panoil, The</i> , 266 U.S. 433.....	21, 23
<i>Phoenix Construction Co. v. The Steamer Poughkeepsie</i> , 212 U.S. 558, affirming per curiam, 162 F. 2d 494.....	20, 22, 23
<i>Phenix Insurance Co., Ex Parte</i> , 118 U.S. 610.....	21
<i>Plymouth, The</i> , 3 Wall. 20.....	21
<i>Pure Oil Co. v. Snipes</i> , 293 F. 2d 60.....	6, 24
<i>Raithmoor, The</i> , 241 U.S. 166.....	22, 23
<i>Southern Pacific Co. v. Jensen</i> , 244 U.S. 205.....	20
<i>T. Smith & Son, Inc. v. Taylor</i> , 276 U.S. 179.....	21
<i>Troy, The</i> , 208 U.S. 321.....	21
<i>Tungus, The v. Skovgaard</i> , 358 U.S. 588.....	13, 18
<i>United Pilots Association v. Halecki</i> , 358 U.S. 613.....	18
<i>United States v. California</i> , 332 U.S. 19.....	7
<i>United States v. Louisiana</i> , 339 U.S. 699.....	7
<i>United States v. Texas</i> , 339 U.S. 707.....	7
<i>Western Fuel Co. v. Garcia</i> , 257 U.S. 233.....	13
<i>Wislon v. Transocean Airlines</i> , 121 F. Supp. 85.....	15, 18

Statutes:

Death on the High Seas Act:

46 U.S.C. 761.....	2
46 U.S.C. 761-768.....	5
Extension of Admiralty Jurisdiction Act, 46 U.S.C. 740.....	21

Statutes—Continued

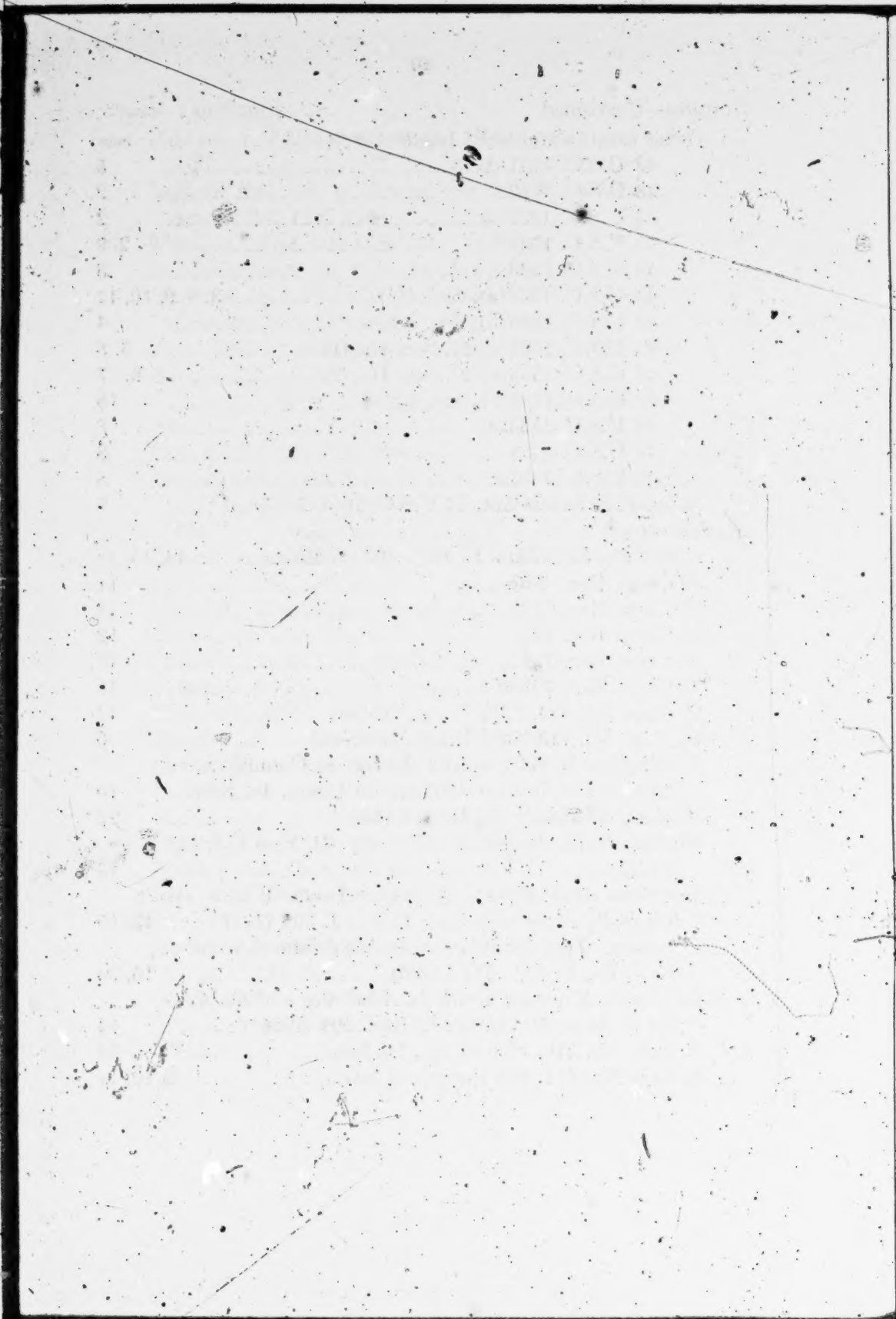
Outer Continental Shelf Lands Act:

	Page
43 U.S.C. 1331-1343-----	5
43 U.S.C. 1332-----	2
43 U.S.C. 1332(a)-----	2
43 U.S.C. 1332(b)-----	2, 9
43 U.S.C. 1333-----	3
43 U.S.C. 1333(a), Sec. 4(a)-----	3, 8, 9, 10, 11
43 U.S.C. 1333(b), Sec. 4(b)-----	4
43 U.S.C. 1333(a)(1), Sec. 4(a)(1)-----	3, 8
43 U.S.C. 1333(a)(2), Sec. 4(a)(2)-----	3, 8, 17
43 U.S.C. 1333(c), Sec. 4(c)-----	18
43 U.S.C. 1333(e)-----	8
43 U.S.C. 1334-----	8
43 U.S.C. 1337-----	8

Submerged Lands Act, 43 U.S.C. 1301-1315-----	7
---	---

Miscellaneous:

Comment, 55 Colum. L. Rev. 907 (1955)-----	14, 15, 18
99 Cong. Rec. 6963-----	11
99 Cong. Rec. 7235-----	12
99 Cong. Rec. 7258-----	12
99 Cong. Rec. 7261-----	12
99 Cong. Rec. 10500-----	11
H. Rep. No. 674, 66th Cong., 2d Sess.-----	14
H. Rep. No. 413, 83rd Cong., 1st Sess.-----	6
Hearings on S. 1901, before the Senate Committee on Interior and Insular Affairs, 83d Cong., 1st Sess.---	10
Hughes, <i>Admiralty</i> (2d Ed.), § 100-----	2
Hughes, <i>Death Actions in Admiralty</i> , 31 Yale L.J. 115 (1921)-----	13
Magruder and Grout, <i>Wrongful Death Within the Admiralty Jurisdiction</i> , 35 Yale L.J. 395 (1926)-----	13, 15
Robinson, <i>Tort Jurisdiction in American Admiralty</i> , 84 U. Pa. L. Rev. 716 (1936)-----	15, 23
Robinson, <i>Wrongful Death in Admiralty and the Con- flict of Laws</i> , 36 Colum. L. Rev. 406 (1936)-----	14
S. Rep. No. 216, 66th Cong., 1st Sess.-----	14
S. Rep. No. 411, 83d Cong., 1st Sess.-----	9, 10, 11



In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL., PETITIONERS

v.

AETNA CASUALTY AND SURETY COMPANY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to this Court's order of April 2, inviting the parties and the Solicitor General, as *amicus curiae*, to discuss the following question:

In light of the cases in this Court relating to the limits of admiralty jurisdiction, such as *Phoenix Construction Co. v. The Steamer Poughkeepsie*, 212 U.S. 558, affirming 162 F. 494 (1908 D.C. S.D. N.Y.), and in light of the language and legislative history of the Outer Continental Shelf Lands Act, does the Death on the High Seas Act apply to these accidents? See *Pure Oil Co. v. Snipes*, 293 F. 2d 60 (C.A. 5th Cir., 1961).

STATUTES INVOLVED

The Death on the High Seas Act provides in pertinent part:

46 U.S.C. 761. *Right of action; where and by whom brought.*

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

The Outer Continental Shelf Lands Act provides in relevant part:

43 U.S.C. 1332. *Congressional declaration of policy; jurisdiction; construction.*

(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

(b) This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

43 U.S.C. 1333. *Laws and regulations governing lands—Constitution and United States laws; laws of adjacent States; publication of projected States lines; restriction on State taxation and jurisdiction.*

(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of [August 7, 1953] are declared to be the law of the United States for that portion of the subsoil and seabed of the Outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the Outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining

each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the Outer Continental Shelf.

(b) *Jurisdiction of United States district courts.* The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the Outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the Outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose.

STATEMENT

These cases arose out of fatal accidents occurring on or adjacent to stationary oil drilling platforms located in the Gulf of Mexico, on the Outer Continental Shelf, more than 25 miles south of the Louisiana coastline.

Petitioner Dore's decedent, an oil company employee, was operating a crane on the drilling platform which was being used to unload a barge lying alongside the platform. While a load was being lifted, the crane toppled over and fell, carrying Mr. Dore some 60 feet to the deck on the barge below, where he was

killed. See *Dore v. Link Belt Company*, 391 F. 2d 671, 673, n. 4 (C.A. 5).

Petitioner Rodrigue's decedent, an employee of a hydraulic testing company, died of injuries sustained in a fall from the top of an oil derrick to the floor of an offshore platform on which the derrick had been constructed.

In each case, the petitioner filed actions in the district court under both the Louisiana Wrongful Death Act and the Death on the High Seas Act, and the district court dismissed the claims based on the State statute. The court of appeals held in *Dore* that the Death on the High Seas Act provided the exclusive remedy for the accident, and affirmed in *Rodrique* on the authority of *Dore*. The petition for certiorari presented the question whether the Death on the High Seas Act affords the exclusive remedy for death on an artificial structure on the outer continental shelf, or whether the recovery permitted for State-created causes of action may also be had.

ARGUMENT

The question posed by the Court is whether, in the light of its decisions defining the limits of admiralty jurisdiction and the language and legislative history of the Outer Continental Shelf Lands Act, the Death on the High Seas Act applies to the accidents involved in this case.¹ As developed in this memorandum, we

¹ In holding that the Death on the High Seas Act (46 U.S.C. 761-768) was applicable to the accident in the *Dore* case, the court of appeals relied in part on its earlier decisions that Congress intended through the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343) that federal maritime law should be

believe that the question should be answered affirmatively. Our analysis, however, has led us to conclude that the determination whether the Death Act so applies also requires consideration of whether it applied prior to the enactment of the Outer Continental Shelf Lands Act.

Our conclusion, set forth in Point I, below, is that the Outer Continental Shelf Lands Act did not affect, one way or the other, the applicability of the Death Act to accidents occurring on platforms on the outer continental shelf. In our view, therefore, the question is whether the Death Act by its own force applies to these accidents; in Point II we conclude that it does. Finally, in Point III, we argue that it would be consistent with the traditional limits of admiralty jurisdiction to apply the Death Act to these accidents.

I. IN THE OUTER CONTINENTAL SHELF LANDS ACT CONGRESS DID NOT CHANGE THE COVERAGE OF THE DEATH ON THE HIGH SEAS ACT

The Outer Continental Shelf Lands Act was enacted in 1953 in order to facilitate the prudent extraction of the large sources of oil and gas which were submerged off the nation's shores.² The Act authorizes

applied in suits for injuries sustained on platforms located on the continental shelf (A. 57-59). *Pure Oil Co. v. Snipes*, 293 F. 2d 60 (C.A. 5); *Ocean Drilling & Exp. Co. v. Berry Brps. Oilfield Service*, 377 F. 2d 511 (C.A. 5); *Loffland Bros. Co. v. Roberts*, 386 F. 2d 540 (C.A. 5), certiorari denied, 389 U.S. 1040; *Movable Offshore Co. v. Ousley*, 346 F. 2d 870 (C.A. 5).

² See H. Rep. No. 413, 83rd Cong., 1st Sess.

In the 1940's, several States had undertaken to grant leasing

the Secretary of the Interior to promulgate regulations governing exploration and removal of natural resources and to enter into mineral leases on behalf

and development rights in these offshore locations, both within and outside three miles of the coastline. That practice was terminated in 1947 when this Court, upholding the paramount right of the United States to the natural resources in the entire continental shelf, ruled that the States were without power to grant rights to, or authorize extraction of, minerals on the shelf even inside the three-mile zone. *United States v. California*, 332 U.S. 19. Three years later the preeminent nature of the federal interest in such resources was reaffirmed. *United States v. Louisiana*, 339 U.S. 699; *United States v. Texas*, 339 U.S. 707.

Early in 1953, concerned with the discontinuance of offshore oil and gas development resulting in part from the decision in the *California* case, Congress enacted the Submerged Lands Act, 43 U.S.C. 1301-1315, ceding all rights in the submerged lands and resources within State boundaries (with certain exceptions) to the several States or their lessees. For that purpose, State boundaries were limited to a distance of three miles from the coast or, in certain circumstances later held to exist only as to Texas and Florida, nine miles in the Gulf of Mexico. The Outer Continental Shelf Lands Act provided for federal administration and leasing of the submerged lands and resources appertaining to the United States, seaward of those given to the States.

The continental shelf is the submerged portion of the North American continent extending seaward from the shoreline. Along the Atlantic Coast the shelf extends out as much as 250 miles, and about 200 miles in the Gulf of Mexico. The total area of the shelf adjacent to coastal states (including Alaska) is about 900,000 square miles. The part of the shelf which lies within the belt over which the States were given control under the Submerged Lands Act contains about 30,000 square miles. The *outer* continental shelf (outside the area given to the States) is subject to the Outer Continental Shelf Lands Act and includes about 97 percent of the total area.

of the United States (43 U.S.C. 1334, 1337). Authority to promulgate and enforce safety regulations for artificial islands and other structures is given to the United States Coast Guard (43 U.S.C. 1333(e)).

Section 4(a)(1) of the Act, 43 U.S.C. 1333(a)(1), which is principally involved here, adopts federal law as the primary source of law for the outer continental shelf:

The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon * * *

As a supplement to federal law, the Act extends State law to the shelf on the following conditions (Section 4(a)(2), 43 U.S.C. 1333(a)(2)):

To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of [August 7, 1953] are declared to be the law of the United States for * * * the outer Continental Shelf, and artificial islands and fixed structures erected thereon * * *

On its face, therefore, Section 4(a) of the Act does not purport to authorize or require the application of any federal law beyond the transaction to which it ordinarily would apply. That this was the intention of the Congress, particularly with respect

to the maritime law, is shown by the evolution of Section 4(a).³

In the original bill introduced in the Senate, Section 4(a) specifically provided that the laws applicable to United States vessels on the high seas should be applied to acts occurring on offshore platforms.⁴ If the Congress had enacted that provision, there would be little doubt that the Death Act would apply when fatal injuries were received on a drilling platform, without further inquiry into whether the accident otherwise would have been within the maritime tort jurisdiction.⁵

³ Congress specified that the Act applies only to the seabed and subsoil and the structures erected in the waters of the continental shelf. It expressly disclaimed any intention to alter the high seas nature of the water above the shelf, or to claim any jurisdiction over the water itself. "This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected" (43 U.S.C. 1332(b)). See S. Rep. No. 411, 83d Cong., 1st Sess., p. 2.

⁴ The original Section 4(a) provided as follows (S. Rep. No. 411, 83d Cong., 1st Sess., p. 15):

"Sec. 4(a). All acts occurring and all offenses committed on any structure (other than a vessel), which is located on the outer Continental Shelf or on the waters above the outer Continental Shelf for the purpose of exploring for, developing, or removing the natural resources of the subsoil or seabed of such outer Continental Shelf, shall be deemed to have occurred or been committed aboard a vessel of the United States on the high seas and shall be adjudicated and determined or adjudged and punished according to the laws relating to such acts or offenses occurring on vessels of the United States on the high seas."

⁵ Peter Leroux of the Office of the Senate Legislative Counsel testified during the committee hearing that the "purpose of this subsection is to make the laws relating to civil acts and criminal offenses on vessels of the United States applicable to such

During the hearings, however, witnesses criticized the original version of Section 4(a) because it applied only to acts occurring on the offshore structures and thus did not cover operations conducted beneath the water on the seabed or in the subsoil (see, e.g., Hearings on S. 1901, fn. 5, *supra*, at 642-644; S. Rep. No. 411, *supra*, at 23), and because the body of maritime law was too narrow to provide comprehensive regulation of the exploitation of the Outer Continental Shelf and to govern the activities of those who worked on and inhabited the offshore structures (*id.* at 645-648, 660, 663). The extension of maritime law to offshore structures was also specifically criticized as unnecessarily complicating the resolution of legal disputes (*id.* at 11, 16, 18-19, 44, 201, 264, 277-278, 645). Consequently, the Senate Interior Committee recom-

acts and offenses occurring on platforms constructed on pilings set into the submerged land of the shelf or on floating platforms; such platforms are not considered to be vessels. Vessels are excepted here since these laws are already applicable to vessels." Hearings on S. 1901 before the Senate Committee on Interior and Insular Affairs, 83d Cong., 1st Sess., p. 8.

This view was shared by Senator Cordon, the acting chairman of the committee, who said:

* * * [W]hen these individuals leave their vessels and board this structure, they are subject to the law that operates on the structure, which in this instance is the same law that operates on board a ship; but becomes that [*i.e.*, applicable to the structure] only because of this act (*id.* at 9).

Senator Cordon concluded that "To the extent the maritime law would apply with respect to the ship, it will apply with respect to the structure" (*id.* at 10). This interpretation was shared by then Assistant Attorney General Rankin, who viewed the section as intending to apply maritime law to the structures (*id.* at 644).

mended a new Section 4(a), enacted virtually without change, which deleted the reference to injuries occurring on structures, and instead extended to the outer continental shelf all of the "Constitution and laws" of the United States, and, as a supplement to federal law, the compatible laws of the adjacent States, see p. 8, *supra*; S. Rep. No. 411, *supra*, at 15; 99 Cong. Rec. 10500.

The subsequent legislative history does not focus on the revision of Section 4(a) in such a way as to make the intention of the Congress unmistakable. In some places, the deleted provision was described as "unnecessary" in light of the decision to extend all federal laws to the outer shelf. Under this view, the change was intended to broaden the section, but not to eliminate the prior provision making all federal maritime law applicable to the platforms.⁶ On the other hand, several Senators viewed the change as going further;

* As Senator Cordon, the acting chairman of the Interior Committee, explained on the Senate floor (99 Cong. Rec. 6963):—

By the use of this particular approach it became unnecessary to make applicable to the structures, by [express] reference * * * either the maritime law or the social laws, as all those laws, so far as necessary, were made applicable by the extension of the whole body of Federal law to the area. * * *

The Senate Report similarly stated (S. Rep. No. 411, *supra*, at 23):

Section 4(a) of the bill as introduced extended the maritime and admiralty laws of the United States to structures used in connection with mineral development on the outer shelf. It is stricken because the committee determined to extend jurisdiction over the whole of the seabed and the subsoil, as well as to operational structures.

they stated without objection during the debates that the revised Section was intended to eliminate an unwise attempt to extend maritime law to non-maritime matters, see 99 Cong. Rec. 7235 (Senator Ellender), 7258 (Senator Daniel), 7261 (Senator Long). Even in the absence of those comments, however, it would be difficult to discern an intention to extend maritime tort jurisdiction to offshore platforms from legislative proceedings in which the significant feature was the deletion of the language which sought to achieve that result. Rather, the more reasonable interpretation of the legislative history is that Congress intended to make no change in the existing reach of the Death on the High Seas Act, whatever it was.

II. THE DEATH ON THE HIGH SEAS ACT COVERS ACCIDENTS OCCURRING ON OFFSHORE DRILLING PLATFORMS

The language of the Death on the High Seas Act is broad enough to cover accidents occurring on offshore drilling platforms. The Act provides a right of action for death "caused by wrongful act, neglect, or default occurring on the high seas * * *." Offshore drilling platforms are completely surrounded by water, are attached to the bottom of the sea, are close to the surface of the water, have no direct physical connection with the shore, and can be reached only by water or air. An accident upon such a platform occurs "on the high seas" in much the same sense as one upon a ship traveling upon such seas. Moreover, in some respects these platforms have the essential attributes of ships. We understand that the platforms ordinarily are floated out (either as a unit or sometimes in sections) to the spot where they are attached to the bottom; that

such attachment often is made by the lowering of retractable legs; and that when the drilling at a particular site has been completed, the platform is disconnected from the bottom and is floated to a new location.

The question, therefore, is whether there is anything in either the history or purpose of the Death Act indicating that Congress intended the language to have a more restricted reach. Both of these factors, as well as the adverse consequences of holding the Act inapplicable to such platforms, require a negative answer.

1. The Death Act was enacted in response to the need for uniformity in the law governing the right to recover where fatal injuries were wrongfully inflicted on board a United States ship on the high seas.⁷ Like the common law, the general maritime law, which is the basic source of law in federal admiralty proceedings, gives no cause of action for wrongful death.⁸ Prior to 1920, in order to alleviate the harsh consequences of the absence of a federal death statute, maritime tort suits ~~promised~~ on the various State death statutes were entertained in actions at law in the State courts and in admiralty actions in the federal courts—the State statute being viewed as permissibly “supplementing” the maritime law ~~in its~~ purpose.⁹ For reasons which are extensively detailed

⁷ See generally, Hughes, *Death Actions in Admiralty*, 31 Yale L.J. 115 (1921); Magruder and Grout, *Wrongful Death Within the Admiralty Jurisdiction*, 35 Yale L.J. 395 (1926).

⁸ See *The Harrisburg*, 119 U.S. 199.

⁹ See *The Hamilton*, 207 U.S. 398; *Western Fuel Co. v. Garcia*, 257 U.S. 233; *The Tungus v. Skovgaard*, 358 U.S. 588; Magruder and Grout, *supra*, at 396-401.

elsewhere,¹⁰ however, the application of State death acts was a highly unsatisfactory solution to the inadequacy of federal law: maritime law tort claims were subjected to the vagaries of the rights and limitations of the differing State statutes; courts were faced with the exceedingly difficult and sometimes paralyzing problem of selecting which State death act to apply—the law of State of registry of the decedent's vessel, the law of the domicile of the decedent, the law of the domicile of the owner of the decedent's vessel, or the law of the State of registry of a tortfeasor vessel; and litigants occasionally were denied any remedy because the court applied the law of a State which either did not have a death act, or whose death act was unavailable because of its statute of limitations or some other restriction.

"The Death on the High Seas Act was prompted, in large part, by the desire to put an end to the uncertainties attending the application of state statutes to deaths on the high seas. * * * [T]he scope of the Death on the High Seas Act, within the geographical area of its operation, was intended to be as broad as the traditional tort jurisdiction of admiralty. * * * [T]he purpose of the Act was to afford a uniform right of action for death resulting from wrongful acts within the admiralty jurisdiction, excepting state

¹⁰ See Hughes, *supra*, at 116-117; Magruder and Grout, *supra*, at 409-423; Robinson, *Wrongful Death in Admiralty and the Conflict of Laws*, 36 Colum. L. Rev. 406 (1936); Comment, 55 Colum. L. Rev. 907-909 (1955); S. Rep. No. 216, 66th Cong., 1st Sess.; H. Rep. No. 674, 66th Cong., 2d Sess.

territorial waters." *Wilson v. Transocean Airlines*, 121 F. Supp. 85, 90, 92 (N.D. Calif.).¹¹

It was generally agreed at the time the Death Act was enacted, and seems to be settled law today, that maritime tort jurisdiction depends on the place where the injury occurs; it applies to all injuries that occur upon navigable waters, even though maritime matters are not involved in the circumstances of the injury.¹² Thus, when Congress made the Death Act applicable to wrongful conduct "occurring on the high seas," it neither enlarged nor circumscribed the scope of maritime tort jurisdiction: maritime law applied to all injuries on board a vessel which, at that time, was the only type of injury that occurred on the high seas. There is no indication, however, that Congress sought to freeze the coverage of the Act to maritime structures as they were then known, i.e., ships; rather, it appears that Congress intended to make the Act cover all accidents that would be within the scope of traditional admiralty tort jurisdiction. See *D'Aleman v. Pan American World Airways*, 259 F. 2d 493, 495 (C.A. 2), discussed *infra*, pp. 18-19.

Accidents occurring on platforms located on the open sea are within that jurisdiction. See, e.g., *Doullut & Williams Co. v. United States*, 268 U.S. 33, 35 (damage to pilings in the Mississippi River, which were "driven into the bottom of the river and * * * completely surrounded by navigable water and * * *

¹¹ The legislative history of the Death Act is set forth in the *Wilson* case, 121 F. Supp. at 88-90.

¹² See generally, Robinson, *Tort Jurisdiction in American Admiralty*, 84 U. Pa. L. Rev. 716, 734-742 (1936); Magruder and Grout, *supra*, at 401-408; Comment, 55 Colum. L. Rev. 907, 918-919.

used exclusively as aids to navigation"); *Dixon v. Oosting*, 238 F. Supp. 25 (E.D. Va.). "[E]vents occurring on navigable waters" are "matters which traditionally have been within the cognizance of admiralty courts * * *" (*O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 41).

In the *Dixon* case, *supra*, the court, in holding that the Longshoremen's and Harbor Workers' Compensation Act applied to an injury suffered by a workman operating a pile driver in Chesapeake Bay, a mile and a half from shore, in connection with the construction of a bridge, stated (p. 29):

An examination of this record fails to supply any evidence justifying a finding that the injury was not sustained upon the navigable waters of the United States. The "monster" was approximately one and one-half miles from the nearest land, sitting on piling, and totally unconnected with land or any extension of land. No one controverts the fact that the piles upon which the "monster" was resting were in the navigable waters of the United States. The only means of access to the work site was by boat. The "monster" was about 18 feet above the open water and was not attached or connected to any other portion of the partially completed roadway. * * * Unless the Longshoremen's Act must be so strictly construed as to mean that there can be no compensable injury unless the injured party comes in contact with the water—a statement that needs no citation of authority to refute—the injury was clearly compensable under the federal act.

Although the question in *Dixon* was whether the injury occurred "upon the navigable waters" (the jurisdictional standard of the Longshoremen's Act) rather than "on the high seas," the reasoning of the case equally supports the applicability of the Death Act to the injuries involved in the present case.

The exclusion of accidents occurring on offshore platforms from the coverage of the Death Act would result in many of the difficulties which, in the case of wrongful deaths aboard ship, prompted the Death Act itself; there is no reason to believe that if Congress had ever focused on the problem, it would have thus limited the Death Act. For example, if the Death Act were viewed as covering only those injuries on platforms that result from strictly maritime activities, with State law applicable to the rest, the courts would be required to engage in the same kind of futile "line drawing" that has so plagued the administration of the Longshoremen's Act and resulted in the so-called "twilight zone" of overlapping State and federal jurisdiction. Cf. *Calbeck v. Travelers Insurance Co.*, 370 U.S. 114. If, on the other hand, the Death Act were wholly inapplicable, the result would be to make applicable to the platforms, under Section 4(a)(2) of the Outer Continental Shelf Land Act (*supra*, p. 3), the wrongful death statute of the coastal State within which the platform would be located if the boundaries of the State were extended to the outer edge of the shelf. This would subject the next-of-kin of deceased platform workers to the differing limitations that the various States may impose in wrongful death actions, such as the bar of contributory negli-

gence. Cf. *The Tungus v. Skovgaard*, 358 U.S. 588; *United Pilots Association v. Halecki*, 358 U.S. 613. In the Death Act, however, Congress manifested an intention to provide a uniform rule governing fatal accidents occurring on the high seas; it certainly did not intend to create little islands of State law in an area otherwise clearly covered by federal law. Indeed, in Section 4(c) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(c)), Congress specifically made the Longshoremen's Act applicable to such platforms; it is unlikely that it would have done so if it had not contemplated that the Death Act was ~~not~~ already applicable to them.

2. The applicability of the Death on the High Seas Act to accidents on offshore drilling platforms is further supported by the cases that have applied that Act to aircraft accidents occurring over international waters, without regard to whether the injury actually was inflicted in the air or upon crashing into the water. The lower federal courts generally have held that the Death Act covers such accidents, usually on the ground that the *lex loci* is maritime law and that the Death Act is a part of such law. See, e.g., *D'Aleman v. Pan American World Airways*, 259 F. 2d 493 (C.A. 2); *Wilson v. Transocean Airlines*, 121 F. Supp. 85 (N.D. Calif.); Comment, 55 Colum. L. Rev. 907 (1955). In the *D'Aleman* case the court, in ruling that "the Death on the High Seas Act grants a right of action in admiralty for death caused by wrongful act, neglect or default occurring in the air space over the high seas" (p. 496), stated (p. 495):

The purpose of the Act was to create a uniform cause of action where none existed before

and which arose beyond the territorial limits of the United States or any State thereof. When the Act was passed (March 30, 1920) the only feasible way to be carried beyond the jurisdiction of any law applicable to wrongful death was by ship. However, with the development of the transoceanic airship the same extraterritorial situation was made possible in the air. The Act was designed to create a cause of action in an area not theretofore under the jurisdiction of any court. The means of transportation into the area is of no importance. The statutory expression "on the high seas" should be capable of expansion to, under, or, over, as scientific advances change the methods of travel. * * *

If an accident in an airplane thousands of feet above the surface nevertheless occurs "on the high seas," *a fortiori* an accident on a platform only a few feet above the water meets that standard.

3. The problem in the present case is quite unlike that in *Nacirema Operating Co., Inc.*, and *John P. Traynor v. Johnson*, Nos. 528 and 663, this Term, which the Court on May 19, 1968, set for réargument next Term. The government there contends that the Longshoremen's Act, which applies to injuries occurring "upon the navigable waters of the United States," does not cover injuries suffered by longshoremen on piers while loading a ship's cargo.

In the first place, the offshore platforms involved in the present case are wholly at sea, completely surrounded by water, with no connection with the land; in the *Nacirema* case, on the other hand, the piers are directly attached to the land and traditionally have been viewed in admiralty as extensions thereof.

Equally, if not more, important is the fact that the legislative history of the Longshoremen's Act, as this Court frequently has recognized, shows that Congress intended in that Act to embody the line of demarcation between State and federal authority over maritime matters that this Court established in *Southern Pacific Co. v. Jensen*, 244 U.S. 205, and related cases—a line based on a more limited view of the federal constitutional admiralty power than exists today. See our brief in *Nacirema*, pp. 10–15. In short, Congress there was trying to limit federal law to areas not a part of or attached to the shore or mainland. In the present case, on the other hand, these platforms were clearly within admiralty jurisdiction as it existed when the Death Act was passed in 1920, and there is no indication that Congress intended to limit the reach of the Death Act to ships.

III. THE APPLICATION OF THE DEATH ON THE HIGH SEAS ACT TO ACCIDENTS OCCURRING ON OFF-SHORE DRILLING PLATFORMS WOULD NOT VIOLATE CONSTITUTIONAL RESTRICTIONS ON THE SCOPE OF ADMIRALTY JURISDICTION

We perceive no constitutional barrier to the application of the Death on the High Seas Act to drilling platform accidents. Such application would not be incompatible with the view of maritime jurisdiction reflected in *Phoenix Construction Co. v. The Steamer Poughkeepsie*, 212 U.S. 558, affirming *per curiam* 162 Fed. 494 (S.D. N.Y.), to which the Court has directed the parties' attention. That case was an *in rem* action in admiralty against a vessel which had collided with a platform in the Hudson River housing several borings that had been drilled in order to locate a

submerged aqueduct. Viewing the damaged project as "not even suggestive of maritime affairs," and relying upon *Cleveland Terminal R.R. Co. v. Cleveland S.S. Co.*, 208 U.S. 316, the district court ruled that admiralty jurisdiction did not cover the case (162 Fed. at 496).

The district court's reliance on *Cleveland Terminal* is significant, for it is illustrative of the long line of cases in this Court dealing with injuries to bridges, docks, piers, and other similar structures which have been viewed as physical extensions of the shore.¹³ Thus, in *Cleveland Terminal*, it was held that there was no admiralty jurisdiction over an action for damages inflicted by a vessel to a pier of a bridge over the Cuyahoga River. The ground for these decisions was that such structures pertained to the land and were utilized to aid commerce on land. Accordingly, the causes of action were held to be beyond the reach of the historical limits of admiralty jurisdiction and remedies. See, e.g., *Johnson v. Chicago & Pacific Elevator Co.*, 119 U.S. 388, 397.

The offshore oil drilling platforms involved in the present case, although fixed to the subsoil, are not connected to the shore. They are far out at sea, completely surrounded by water. This Court has relied on that fact to distinguish the *Cleveland Terminal* line of cases in holding that suits for injury to such structures are cognizable in admiralty. See *Doullut &*

¹³ See, e.g., *T. Smith & Son, Inc. v. Taylor*, 276 U.S. 179; *The Panoil*, 266 U.S. 433; *Martin v. West*, 222 U.S. 191; *The Troy*, 208 U.S. 321; *Johnson v. Chicago & Pacific Elevator Co.*, 119 U.S. 388; *Ex Parte Phoenix Insurance Co.*, 118 U.S. 610; *The Plymouth*, 3 Wall. 20.

Williams Co. v. United States, 268 U.S. 33; *The Raithmoor*, 241 U.S. 166; *The Blackheath*, 195 U.S. 361; *Atlee v. Packet Co.*, 21 Wall. 389; Hughes, *Admiralty* (2d Ed.), § 100. See also the Extension of Admiralty Jurisdiction Act, 46 U.S.C. 740; *Gutierrez v. Waterman S.S. Corp.*, 373 U.S. 206, 210. As Mr. Justice Holmes observed in *The Blackheath*, 195 U.S. 361, 365, referring to a beacon located in the middle of a river and resting on piles driven into the bottom,

* * * [I]t seems more arbitrary than rational to treat attachment to the soil as a peremptory bar outweighing the considerations that the injured thing was * * * no part of the shore, but surrounded on every side by water, a mere point projecting from the sea.¹⁴

The district court in *The Poughkeepsie* distinguished *The Blackheath* on the ground that Mr. Justice Holmes' description of the beacon as an "aid to navigation" was an independent test for admiralty jurisdiction over offshore structures, which was not satisfied by the drilling operation in that case. Although the "aid-to-navigation" inquiry appears to have been enlarged beyond its original significance¹⁵ and to have increased the number of imponderable dis-

¹⁴ The beacon "is only technically land, through a connection at the bottom of the sea. In such a case [maritime] jurisdiction may be taken without transcending the limits of the Constitution * * *." 195 U.S. 361, 367-368. See concurring opinion of Mr. Justice Brown, 195 U.S. at 368-369: "The distinction between damage done to fixed and to floating structures is a somewhat artificial one, and, in my view, founded upon no sound principle."

¹⁵ In *The Blackheath* itself, Mr. Justice Holmes cited with approval *The Arkansas*, 17 Fed. 383 (S.D. Iowa), which had also adopted the distinction between structures contiguous with the

tinctions in the maritime law,¹⁶ the offshore platforms involved here may reasonably be found to satisfy that requirement, if applicable. Unlike the dangerous impediment to navigation involved in *The Poughkeepsie*, offshore oil drilling platforms undoubtedly provide some incidental assistance to navigators in fixing their positions. Moreover, maritime navigation is extensively involved in offshore drilling operations because the platforms are accessible, except for helicopter flights, only by boat.

It also may be argued that the rules developed in the *Cleveland Terminal* line of cases are not conclusive on the question whether maritime law applies to personal injury actions arising on offshore structures. Whatever policies may have justified the denial of admiralty remedies to the owner of a pier or bridge which was damaged by a vessel—an inquiry of only historical significance since that rule was abrogated by the Extension of Admiralty Jurisdiction Act—it would not necessarily follow that the same narrow view of admiralty jurisdiction is justified in cases where the issues involve personal safety and the loss of earning capacity or support. In this situation, the

shore and those surrounded by water. *The Arkansas*, however, was not concerned with a structure which aided navigation, but with an isolated oil storage depot in the middle of the Mississippi River. Similarly, in *Atlee*, *supra*, this Court, applying the admiralty jurisdiction to a storage pier located in the middle of a river, expressly recognized that the pier was in no way an aid to navigation (21 Wall. at 394). See, *The Raithmoor*, *supra*.

¹⁶ Compare *The Panoil*, 266 U.S. 433, with *Doullut & Williams Co. v. United States*, 268 U.S. 33; see Robinson, *Tort Jurisdiction in American Admiralty*, 84 U. Pa. L. Rev. 716, 718-726 (1936).

courts may properly take account of the fact that workmen on offshore platforms frequently are exposed to some of the same hazards of the sea which characterize employment aboard a vessel. See *Pure Oil Co. v. Snipes*, 293 F. 2d 60 (C.A. 5).

CONCLUSION

For the foregoing reasons, the question framed by the Court in its order of April 2 should be answered affirmatively.

Respectfully submitted.

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MAY 1969.

SUPREME COURT OF THE UNITED STATES

No. 436.—OCTOBER TERM, 1968.

Paulette Boudreaux Rodrigue
et al., Petitioners,
v.
Aetna Casualty and Surety
Company et al.

On Writ of Certiorari to
the United States Court
of Appeals for the Fifth
Circuit.

[June 9, 1969.]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case involves two men, Dore and Rodrigue, who met their deaths on artificial island drilling rigs located on the outer Continental Shelf off the Louisiana coast. Each man's family brought suit for wrongful death in the federal courts both under the Death on the High Seas Act, c. 111, 41 Stat. 537, 46 U. S. C. §§ 761-768 (hereinafter "Seas Act"), and under Louisiana law assertedly made applicable by the Outer Continental Shelf Lands Act, c. 345, 67 Stat. 462, 43 U. S. C. § 1331 *et seq.* (hereinafter "Lands Act"). Each family's suit was separately heard and decided in the District Courts and in the Court of Appeals below. In both cases the Court of Appeals for the Fifth Circuit, affirming the District Courts, held that the Seas Act was the exclusive remedy for these deaths. Petitioners sought certiorari, claiming that they are entitled to an additional remedy under the state law adopted by the Lands Act.

In the *Dore* case, the decedent was working on a crane mounted on the artificial island and being used to unload a barge. As the crane lifted a load from the barge to place it on the artificial island, the crane collapsed and toppled over onto the barge, killing the worker. His widow and her three children brought a single action in the United States District Court for the

Western District of Louisiana, alleging their own and the decedent's residency in Louisiana and the negligence of the firms which manufactured, installed, and serviced the crane. The suit was brought under the "General Maritime Laws, the Death on the High Seas Act, . . . Article 2315 of the [Louisiana Code] and under the other laws of the United States and the State of Louisiana." It claimed \$670,000 in damages to the family plaintiffs for loss of their husband and father, including pecuniary and psychic losses. On motion for summary judgment as to all claims but that under the Death on the High Seas Act, the district judge determined that the latter was plaintiffs' only remedy, removed the case to the admiralty side of the court, and thus limited the plaintiffs' recovery to pecuniary loss. The state statute would have allowed recovery for additional elements of damage. The district judge certified the question pursuant to Federal Rule of Civil Procedure § 54 (b), and the Court of Appeals for the Fifth Circuit affirmed. 391 F. 2d 671.

In the *Rodrigue* case, the decedent was performing a test on a drill pipe. He was high on the derrick rising above the artificial island, and fell from it to his death on the floor of the structure. His widow and two children brought three actions in the District Court for the Eastern District of Louisiana. One was an admiralty action under the Death on the High Seas Act; the other two were civil actions respectively against the owner and insurer of the drill rig, and the owner of the stationary platform. The civil actions were brought under the Outer Continental Shelf Lands Act and Article 2315 of the Louisiana Revised Civil Code. The trial court consolidated the two civil actions and dismissed the insurer, who had been made a party to one of the civil actions pursuant to the Louisiana direct action statute, 22 La. Stat. Ann., Rev. Stat. § 655. No reason was assigned for the dismissal, but the ground urged in the motion was

that the accident did not occur within the State of Louisiana, so that Louisiana law did not apply. Consistent with this, the district judge dismissed the consolidated civil action before trial, on the ground that the Seas Act provided a remedy and that under such circumstances the Lands Act would not make the inconsistent state remedy applicable.¹ The admiralty action proceeded to trial and judgment of \$75,000, 266 F. Supp. 1, which is not now before us. On appeal of the dismissal of the civil actions, the Fifth Circuit Court of Appeals affirmed the District Court *per curiam*, citing its decision in the *Dore* case almost two months before. 395 F. 2d 216.

Certiorari was granted in both cases, 393 U. S. 932 (1968), and they were argued together here. In light of the principles of traditional admiralty law, the Seas Act, and the Lands Act, we hold that petitioners' remedy is under the Lands Act and Louisiana law. The Lands Act makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands as though they were federal enclaves in an upland State. This approach was deliberately taken in lieu of treating the structures as vessels, to which admiralty law supplemented by the law of the jurisdiction of the vessel's owner would apply. *The Hamilton*, 207 U. S. 398 (1907). This was done in part because men working on these islands are closely tied to the adjacent State, to which they often commute and on which their

¹ The District Court dismissed one of the civil causes of action on the ground that unlike the other it did not specifically name the Lands Act, but rested instead directly on Louisiana law. This formal omission was inconsequential because of the District Judge's view that there would be no cause of action even under the Lands Act and Louisiana law together. On remand, it may be that both claims can be construed to assert actions under the Lands Act and Louisiana Law, or that any deficiency in this regard can be cured by amendment of the pleadings. Fed. Rules Civ. Proc. 15.

families live, unlike transitory seamen to whom a more generalized admiralty law is appropriate. Since the Seas Act does not apply of its own force under admiralty principles, and since the Lands Act deliberately eschewed the application of admiralty principles to these novel structures, Louisiana law is not ousted by the Seas Act, and under the Lands Act it is made applicable.

I.

The purpose of the Outer Continental Shelf Lands Act was to define a body of law applicable to the seabed, the subsoil, and the fixed structures such as those in question here on the outer Continental Shelf. That this law was to be federal law of the United States, applying state law only as federal law and then only when not inconsistent with applicable federal law, is made clear by the language of the Act. Section 3 makes it the "policy of the United States" that the affected areas "appertain to the United States and are subject to its jurisdiction, control, and power of disposition."² Section 4³ makes the "Constitu-

² 67 Stat. 462, 43 U. S. C. § 1332:

"(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

³ 67 Stat. 462, 43 U. S. C. § 1333:

"§ 1333. Laws and regulations governing lands.

"(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; restriction on State taxation and jurisdiction.

"(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, how-*

tion and laws and civil and political jurisdiction of the United States" apply "to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State." Since Federal law, because of its limited function in a federal system, might be inadequate to cope with the full range of potential legal problems, the Act supplemented gaps in the federal law with state law through the "adoption of state law as the law of the United States." Under § 4, the adjacent State's laws were made "the law of the United States for [the relevant subsoil and seabed] and artificial islands and fixed structures erected thereon," but only to "the extent that they are applicable and not inconsistent with . . . other Federal laws."

It is evident from this that federal law is "exclusive" in its regulation of this area, and that state law is adopted only as surrogate federal law. The Senate Report on

ever, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this subchapter are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

"(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom."

the bill referred to the "precise unequivocal language" of "the provision for the adoption of State laws as Federal law," and referred to the applicable body of law as consisting of the Constitution and laws of the United States, the regulations of the Secretary of the Interior, and finally the laws of the adjacent States "adopted as Federal law and made applicable to supplement existing Federal law and regulations." S. Rep. No. 411 of the Committee on Interior & Insular Affairs, 83d Cong., 1st Sess., 11 (1953).

It was the Senate Committee which first introduced the present provision adopting state law, and in its report explaining the introduction it asserted: "Paragraph (2) adopts State law as Federal law, to be used when Federal statutes or regulations of the Secretary of the Interior are inapplicable." *Id.*, at 23. This language makes it clear that state law could be used to fill federal voids. And in the conference report, the House managers of the bill noted that laws of adjacent States which are not inconsistent with federal law "are adopted as the laws of the United States for those particular areas." H. R. Rep. No. 1031, of the Conference Committee, 83d Cong., 1st Sess., 12 (1953).

The principles that federal law should prevail, and that state law should be applied only as federal law and then only when no inconsistent federal law applied, was adopted by a Congress in which full debate had underscored the issue. Senator Cordon, in presenting the Lands Act to the Senate, noted that the problem addressed by the committee had been raised by "the fact that the full development of the estimated values in the shelf area will require the efforts and the physical presence of thousands of workers on fixed structures in the shelf area. Industrial accidents, accidental death, peace, and order" present problems requiring a body of law for their solution. Since "as every Member of the Senate

knows, the Federal Code was never designed to be a complete body of law in and of itself," the committee decided that state law would have to be referred to in some instances. Remarks of Senator Cordon, 99 Cong. Rec. 6962-6963. As Senator Anderson, a member of the conference committee, put it: "The real point is . . . that the language in section 4 provides that Federal laws and regulations shall be applicable in the area, but that where there is a void, the State law may be applicable" Remarks of Senator Anderson, 99 Cong. Rec. 7164. Senator Cordon noted that this view was "entirely correct" and added that "These laws, by the terms of the act, are enacted as Federal law."

The opponents of the Act realized full well that state law was being used only to supplement federal law, and Senator Long introduced an amendment to the Act which would have made "the laws of each State applicable to the newly acquired area, and . . . the officials of such State [the agents empowered] to enforce the laws of the State in the newly acquired area." In arguing for his amendment, Senator Long asserted that "[i]t is even more important that State law should apply on the artificial islands than on natural islands" But the amendment was rejected. See 99 Cong. Rec. 7232-7236. This legislative history buttresses the Court of Appeals' finding that in view of the inconsistencies between the state law and the Seas Act, the Seas Act remedy would be exclusive if it applied.

II.

However, for federal law to oust adopted state law federal law must first apply. The court below assumed that the Death on the High Seas Act⁴ did apply, since

⁴ C. 111, 41 Stat. 537; 46 U. S. C. § 761-768. Section 761 reads: "Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine

the island was located more than a marine league off the Louisiana coast. But that is not enough to make the Seas Act applicable.⁵ The Act redresses only those deaths stemming from wrongful actions or omissions "occurring on the high seas," and these cases involve a series of events on artificial islands. Moreover, the islands were not erected primarily as navigational aids, and the accidents here bore no relation to any such function. Admiralty jurisdiction has not been construed to extend to accidents on piers, jetties, bridges, or even ramps or railways running into the sea.⁶ To the extent that it has been applied to fixed structures completely surrounded by water, this has usually involved collision with a ship and has been explained by the use of the structure solely or principally as a navigational aid.⁷ But when the damage is caused by a vessel admittedly in admiralty jurisdiction, the Admiralty Extension Act⁸ would now make available the admiralty remedy in any event.

league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued."

⁵ Since this topic received scant attention in argument in this Court, additional briefs were requested.

⁶ *The Plymouth*, 3 Wall. 20 (1866); *The Troy*, 208 U. S. 321 (1902); *T. Smith & Son, Inc. v. Taylor*, 276 U. S. 179 (1928); *Hastings v. Mann*, 340 F. 2d 910 (C. A. 4th Cir.), cert. denied, 380 U. S. 1963 (1965).

⁷ *The Blackheath*, 195 U. S. 361 (1904); *The Raithmoor*, 241 U. S. 166 (1916); *Doullut & Williams Co. v. United States*, 268 U. S. 33 (1925).

⁸ "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." C. 526, 62 Stat. 496, 46 U. S. C. § 740.

The accidents in question here involved no collision with a vessel, and the structure was not a navigation aid. It was an island, albeit an artificial one, and the accidents had no more connection with the ordinary stuff of admiralty than do accidents on piers. Indeed, the Court has specifically held that drilling platforms are not within admiralty jurisdiction. *Phoenix Construction Co. v. The Steamer Poughkeepsie*, 212 U. S. 558, affirming 162 F. 494 (1908). There a ship damaged a structure "composed of various lengths of wrought iron pipe surrounded by a platform on the surface." Citing the same cases on which the lower court had relied, this Court affirmed its conclusion that jurisdiction was lacking since the "project which the libellant was engaged in is not even suggestive of maritime affairs. It was supplying water to a city and the mere fact of the means being carried under the bed of a river, with extensions through the river to the surface, did not create any maritime right, nor was it in any sense an aid to navigation, which was the distinguishing feature of *The Blackheath*." In these circumstances, the Seas Act—which provides an action in admiralty—clearly would not apply under conventional admiralty principles and, since the Lands Act provides an alternative federal remedy through adopted state law, there is no reason to assume that Congress intended to extend those principles to create an admiralty remedy here. And if the Congress had made the 1920 Seas Act applicable, ousting inconsistent state law, the artificial island worker would be entitled to far less comprehensive remedies in many cases than he is now.

Even if the admiralty law would have applied to the deaths occurring in these cases under traditional principles, the legislative history shows that Congress did not intend that result. First, Congress assumed that the admiralty law would not apply unless Congress made it

apply, and then Congress decided not to make it apply. The legislative history of the Lands Act makes it clear that these structures were to be treated as islands or as federal enclaves within a landlocked State, not as vessels.

In introducing the bill to the Senate, Senator Cordon explained its inception as follows:

"The committee first attempted to provide house-keeping law for the outer shelf by applying to the structures necessary for the removal of the minerals in the area under the maritime law of the United States. This was first attempted by incorporating by reference the admiralty statutes. This solution at first seemed to be a reasonably complete answer . . . inasmuch as the drilling platform would have been treated as vessels. Maritime law, which applies to American vessels, would have applied under that theory to the structures themselves.

"However, further consideration clearly showed that this approach was not an adequate and complete answer to the problem. The so-called social laws necessary for protection of the workers and their families would not apply. I refer to such things as unemployment laws, industrial-accident laws, fair-labor-standard laws, and so forth.

"[Ultimately, instead,] the whole body of Federal law [was made applicable] to the area [as well as state law where necessary]. Thus, the legal situation is comparable to that in the areas owned by the Federal Government under the exclusive jurisdiction of the Federal Government and lying within the boundaries of a State in the uplands." 99 Cong. Rec. 6963.

Similarly, Senator Ellender asserted that in the first draft it "was sought to treat the platforms or artificial

islands created in the water as ships" but now the "islands are made subject to our domestic law" instead so as to be "treated just as though they were islands created by nature, insofar as the application of our domestic laws is concerned."

The House bill, H. R. 5134, had made federal law applicable, but also provided that the not "inconsistent . . . laws of each coastal State which so provides shall be applicable," at least if adopted by the Secretary of the Interior. H. R. Rep. No. 413, 83d Cong., 1st Sess., 4, 8-9 (1953). The Senate bill, as it read before committee amendments, provided instead that acts "on any structure (other than a vessel)" located on the Continental Shelf for exploring or exploiting its resources "shall be deemed to have occurred or been committed aboard a vessel of the United States on the high seas and shall be adjudicated . . . according to the laws relating to such acts . . . on vessels of the United States on the high seas." When the Senate bill was reported from committee, this section had been replaced by the present language, omitting entirely any reference to treating the islands as though they were vessels.

Careful scrutiny of the hearings which were the basis for eliminating from the Lands Act the treatment of artificial islands as vessels convinces us that the motivation for this change, together with the adoption of state law as surrogate federal law, was the view that maritime law was inapposite to these fixed structures. See generally Hearings before the Committee on Interior and Insular Affairs, U. S. Senate, 83d Cong., 1st Sess., on S. 1901 (Comm. Print 1953). One theme running throughout the hearings was the close relationship between the workers on the islands and the adjoining States. Objections were repeatedly voiced to application of maritime law and with it, the admiralty principle that the law of the State of the owner of the artificial island

"vessel" is used for supplementation.* On the other hand, federal enforcement of the law in this area was insisted upon by the Department of Justice, and there was substantial doubt whether state law and jurisdiction could or should be extended to the structures.¹⁰ A federal solution was thought necessary.

The committee was aware that it had the power to treat activity on these artificial islands as though it occurred aboard ship. *Jones v. United States*, 137 U. S. 202 (1890); Hearings 511-512; Extension of Admiralty Act of 1948, 62 Stat. 496, 46 U. S. C. § 740; see *United States v. Matson Nav. Co.*, 201 F. 2d 610 (C. A. 9th Cir. 1952); cf. *Gutierrez v. Waterman S. S. Corp.*, 373 U. S. 206, 209 (1963). And the very decision to do so in the initial bill recognized that if it were not adopted explicitly, maritime law simply would not apply to these stationary

* For example, Senator Daniel asserted that "the fixed platforms out there do not even touch the waters except for the supporting pipes or 'legs' which go through the water down into the ground. I think you can treat these platforms as connected with the soil and development of the soil rather than treating them as vessels." Hearings 22. Similarly, Acting Secretary of the Treasury H. Chapman Rose opined in a letter to the Committee that these islands might not even be considered to be "upon navigable waters" for the purpose of applying laws requiring safety lights. Hearings 53. A specific provision was added to the statute to permit safety regulation. § 4 (e), 43 U. S. C. § 1333 (e). Obviously these islands were not constructed principally as aids to navigation as respondents contend, cf. *Pure Oil Co. v. Snipes*, 293 F. 2d 60 (C. A. 5th Cir. 1961), but were instead hazards to navigation requiring warning facilities. Governor Kennon of Louisiana voiced strong opposition, Hearings 449-485, as did Senator Long of that State, e. g., Hearings 275-278. See also Hearings 513-518, 545, 612. And at Hearings 644-645, the inappropriateness of applying the law of the owner of the artificial island or subsoil lease, rather than the law of the adjacent State, was given special emphasis.

¹⁰ See letter to Senator Cordon from Assistant Attorney General J. Lee Rankin, Hearings 700; testimony of Mr. Rankin, Hearings 644-645, 664-665, 652-653.

structures not erected as navigational aids.¹¹ Moreover, the committee was acutely aware of the inaptness of admiralty law. The bill applied the same law to the seabed and subsoil as well as to the artificial islands, and admiralty law was obviously unsuited to that task.¹²

Although the Assistant Attorney General, Office of Legal Counsel, persisted to the end in his claim that admiralty law should apply, and that with it should be incorporated the law of the State of the island's owner, this view obviously did not prevail. Instead, a compromise emerged. The administration's opposition to committing these areas solely to the jurisdiction of state courts, state substantive law, and state law enforcement was recognized in that the applicable law was made federal law enforceable by federal officials in federal courts. But the special relationship between the men working on these stationary islands and the

¹¹ In the opening discussion of the original draft of the bill, treating these islands as vessels, Senator Cordon remarked: "It is the view of the chairman that when these individuals leave their vessels and board this structure, they are subject to the law that operates on the structure, which in this instance is the same law that operates on board a ship, but becomes that *only because of this act*." Hearings 9. (Emphasis added.) And at the end of the hearings, when the Senators were questioning an admiralty lawyer on the treatment these structures would receive absent any statutory provision, he informed them that even a lighthouse would be treated as land, except insofar as it was subject to admiralty jurisdiction as an aid to navigation. Hearings 669-670.

¹² An admiralty expert questioned by the committee took the position that application of maritime law would be unwise. "Maritime law in the strict sense has never had to deal with the resources in the ground beneath the sea, and its whole tenor is ill adapted for that purpose." Hearings 668. Since the Act treats seabed, subsoil, and artificial islands the same, dropping any reference to special treatment for presumptive vessels, the most sensible interpretation of Congress' reaction to this testimony is that admiralty treatment was eschewed altogether, except to the extent that the Extension of Admiralty Act might make it applicable.

adjacent shore to which they commute to visit their families was also recognized by dropping the treatment of these structures as "vessels" and instead, over the objections of the administration that these islands were not really located within a State, the bill was amended to treat them "as if [they] were [in] an area of exclusive Federal jurisdiction located within a state." State law became federal law federally enforced.

In view of all this, and the disclosure by Senator Cordon to the Senate upon introduction of the bill that the admiralty or maritime approach of the original bill had been abandoned, it is apparent that the Congress decided that these artificial islands, though surrounded by the high seas, were not themselves to be considered within maritime jurisdiction. Thus the admiralty action under the Seas Act no more applies to these accidents actually occurring on the islands than it would to accidents occurring in an upland federal enclave or on a natural island to which admiralty jurisdiction had not been specifically extended. At a minimum, the legislative history shows that accidents on these structures, which under maritime principles would be no more under maritime jurisdiction than accidents on a wharf located above navigable waters, were not changed in character by the Lands Act.

Since the inapplicability of the Seas Act removes any obstacle to the application of state law by incorporation as federal law through the Lands Act, the decisions below are reversed and the causes remanded for proceedings consistent with this opinion.

It is so ordered.

